(2) The lawyer–client privilege applies in a proceeding under ch. 949.

History: 1979 c. **189.**

905.15 Privilege in use of federal tax return information. (1) An employee of the department of health and family services, the department of workforce development or a county department under s. 46.215, 46.22 or 46.23 or a member of a governing body of a federally recognized American Indian tribe who is authorized by federal law to have access to or awareness of the federal tax return information of another in the performance of duties under s. 49.19 or 49.45 or 7 USC 2011 to 2049 may claim privilege to refuse to disclose the information and the source or method by which he or she received or otherwise became aware of the information.

(2) An employee or member specified in sub. (1) may not waive the right to privilege under sub. (1) or disclose federal tax return information or the source of that information except as provided by federal law.

History: 1989 a. **31; 1995 a. 27** ss. **7225,9126** (19), 9130 **(4); 1997 a.** 3.

CHAPTER 938
JUVENILE JUSTICE CODE

SUBCHAPTER VI
DISPOSITION

938.34 Disposition of juvenile adjudged delinquent. If the court adjudges a juvenile delinquent, the court shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. **A** disposition under sub. (4m) must be combined with a disposition under sub. (4n). In deciding the dispositions for a juvenile who is adjudicated delinquent, the court shall consider the seriousness of the act for which the juvenile is adjudicated delinquent and may consider any other delinquent act that is read into the record and dismissed at the time of the adjudication. The dispositions under this section are:

(1) COUNSELING. Counsel the juvenile or the parent, guardian or legal custodian.

(2) SUPERVISION. (a) Place the juvenile under the supervision of an agency, the department, if the department approves, or a suitable adult, including a friend of the juvenile, under conditions prescribed by the court including reasonable rules for the juvenile's conduct, designed for the physical, mental and moral well–being and behavior of the juvenile.

(b) If the juvenile is placed in the juvenile's home under the supervision of an agency or the department, order the agency or department to provide specified services to the juvenile and the juvenile's family, which may include but are not limited to individual, family or group counseling, homemaker or parent aide services, respite care, housing assistance, day care or parent skills training.

(c) Order the juvenile to remain at his or her home or other placement for a period of not more than 30 days under rules of supervision specified in the order.

(2g) VOLUNTEERS IN PROBATION PROGRAM. If the juvenile is adjudicated delinquent for the commission of an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under **s.** 973.11 (2) a volunteers in probation program established in the juvenile's county of residence and if the court determines that volunteer supervision under that volunteers in probation program will likely benefit the juvenile and the community, placement of the juvenile with that volunteers in probation program under such conditions as the court determines are reasonable and appropriate. These conditions may include, but need not be limited to, any of the following:

(a) **A** directive to a volunteer to provide for the juvenile a role model, informal counseling, general monitoring and monitoring of the conditions established by the court, or any combination of these functions.

(b) Any other disposition that the court may impose under this section.

(2m) TEEN COURT PROGRAM. Order the juvenile to be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the judge determines that participation in the teen court program will likely benefit the juvenile and the community.

(b) The juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult.

(c) The juvenile admits or pleads no contest in open court, with the juvenile's parent, guardian or legal custodian present, to the allegations that the juvenile committed the delinquent act.

(d) The juvenile has not successfully completed participation in a teen court program during the **2** years before the date of the alleged delinquent act.

(2r) INTENSIVE SUPERVISION. Order the juvenile to participate in an intensive supervision program under s. 938.534.

(3) PLACEMENT. Designate one of the following as the placement for the juvenile:

(a) The home of a parent or other relative of the juvenile, except that the court may not designate the home of a parent or other relative of the juvenile as the juvenile's placement if the parent or other relative has been convicted under s. 940.01 of the first–degree intentional homicide, or under **s.** 940.05 of the 2nd– degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(b) The home of a person who is not required to be licensed if placement is for less than 30 days, except that the court may not designate the name [home] of a person who is not required to be licensed as the juvenile's placement if the person has been convicted under **s.** 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

NOTE: The bracketed language indicates the correct term. Corrective legislation is pending.

(c) **A** foster home or treatment foster home licensed under s. 48.62 or a group home licensed under s. 48.625.

(cm) A group home described in **s.** 48.625 (Im) if the juvenile is at least 12 years of age, is a custodial parent, as defined in **s.** 49.141 (1) (b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

(d) A residential treatment center operated by a child welfare agency licensed under **s.** 48.60.

(e) An independent living situation effective on or after the juvenile's 17th birthday, either alone or with friends, under such supervision as the court considers appropriate, but only if the juvenile is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

(f) A secure detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule, or in a place of non-secure custody designated by the court, subject to all of the following:

1. The placement may be for any combination of single or consecutive days totaling not more than 30. The juvenile shall be given credit against the period of detention or non-secure custody imposed under this paragraph for all time spent in secure detention in connection with the course of conduct for which the detention or non-secure custody was imposed.

2. The order may provide that the juvenile may be released from the secure detention facility, juvenile portion of the jail or place of non-secure custody during specified hours to attend school, to work at the juvenile's place of employment or to attend or participate in any activity which the court considers beneficial to the juvenile.

3. The use of placement in a secure detention facility or in a juvenile portion of a county jail as a disposition under this paragraph is subject to the adoption of a resolution by the county board of supervisors under **s.** 938.06 **(5)** authorizing the use of those placements as a disposition.

(3g) ELECTRONIC MONITORING. Monitoring by an electronic monitoring system for a juvenile subject to an order under sub. (2), (2r), (3) (a) to (e), (4h) or (4n) who is placed in the community.

(4) TRANSFER OF LEGAL CUSTODY. If it is shown that the rehabilitation or the treatment and care of the juvenile cannot be accomplished by means of voluntary consent of the parent or guardian, transfer legal custody to any of the following:

(a) A relative of the juvenile.

(b) A county department.

(c) A licensed child welfare agency.

(4d) TYPE 2 CHILD CARING INSTITUTION PLACEMENT. Place the juvenile in a Type 2 child caring institution under the supervision of the county department and subject to Type 2 status, as described in s. 938.539, but only if all of the following apply:

(a) The juvenile has been found to be delinquent for the commission of an act which if committed by an adult would be punishable by a sentence of **6** months or more.

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the judge determines that any of the conditions specified in sub. (4m) (b) 1**., 2.** or 3. applies, but that placement in the serious juvenile offender program under sub. (4h) or in a secured correctional facility under sub. (4m) would not be appropriate, that determination shall be prima facie evidence that the juvenile is a danger to the public and in need of restrictive custodial treatment under this subsection.

(4h) SERIOUS JUVENILE OFFENDER PROGRAM. Place the juvenile in the serious juvenile offender program under **s.** 938.538, but only if all of the following apply:

(a) The juvenile is 14 years of age or over and has been adjudicated delinquent for committing a violation of **s.** 939.31, 939.32 (1) (a), 940.03, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2) or the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing a violation of **s.** 940.01 or for committing a violation of 940.02 or 940.05.

NOTE: Par. (a) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(a) The juvenile is 14 years of age or over and has been adjudicated delinquent for committing a violation of s. 939.31, 939.32 (1) (a), 940.03, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02 (1), 948.025, 948.30 (2), 948.35 (1) (b) or 948.36 or the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing a violation of s. 940.01 or for committing a violation of 940.02 or 940.05.

(b) The judge finds that the only other disposition that would be appropriate for the juvenile would be placement of the juvenile in a secured correctional facility under sub. (4m).

(4m) CORRECTIONAL PLACEMENT. Place the juvenile in a secured correctional facility or a secured child caring institution under the supervision of the department or in a secured group home under the supervision of a county department if the juvenile is 12 years of age or over or, if the juvenile **is** under 12 years of age, in a secured child caring institution under the supervision of the department or in a secured group home under the supervision of a county department, unless the department, after an examination under **s.** 938.50, determines that placement in a secured correctional facility is more appropriate, but only if all of the following apply:

(a) The juvenile has been found to be delinquent for the commission of an act which if committed by an adult would be punishable by a sentence of 6 months or more.

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the judge determines that any of the following conditions applies, but that placement in the serious juvenile offender program under sub. (4h) would not be appropriate, that determination shall be prima facie evidence that the juvenile is a danger to the public and in need of restrictive custodial treatment under this subsection:

1. The juvenile has committed a delinquent act that would be a felony under **s.** 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), 943.32 (2), 947.013 (1t), (1v) or **(1x),** 948.02 (1) or (2), 948.025 or 948.03 if committed by an adult.

NOTE: Subd. 1. is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

1. The juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), (1m) or (1r), 943.32 (2), 947.013 (1t), (1v) or (1x), 948.02 (1) or (2), 948.025 or 948.03 if committed by an adult.

2. The juvenile has possessed, used or threatened to use a handgun, as defined in **s.** 175.35 (1) (b), short–barreled rifle, as defined in **s.** 941.28 (1) (b), or short–barreled shotgun, as defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony under ch. 940 if committed by an adult.

3. The juvenile has possessed or gone armed with a short–barreled rifle or a short–barreled shotgun in violation of **s.** 941.28 or has possessed or gone armed with a handgun in violation of **s.** 948.60.

(4n) AFTERCARE SUPERVISION. Subject to s. 938.532 (3) and to any arrangement between the department and a county department regarding the provision of aftercare supervision for juveniles who have been released from a secured correctional facility, a secured child caring institution or a secured group home, designate one of the following to provide aftercare supervision for the juvenile following the juvenile's release from the secured correctional facility, secured child caring institution or secured group home:

(a) The department.

(b) The county department of the county of the court that placed the juvenile in the secured correctional facility, secured child caring institution or secured group home.

(c) The county department of the juvenile's county of legal residence.

(5) RESTITUTION. (a) Subject to par. (c), if the juvenile is found to have committed a delinquent act which has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, order the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well–being and needs of the victim, considers it beneficial to the well–being and behavior of the juvenile. Any such order shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services and may include a schedule for the performance and completion of the services. Objection by the juvenile to the amount of damages claimed shall entitle the juvenile to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this paragraph shall be reduced by the amount recovered as restitution under **s.** 938.45 (1r) (a).

(am) Subject to par. (c), order a juvenile who owes restitution under par. (a) and who is receiving income while placed in a secured correctional facility, residential treatment center or other out-of–home placement to contribute a stated percentage of that income towards that restitution.

(b) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under **s.** 103.70 (1).

(c) Under this subsection, a court may not order a juvenile who is under 14 years of age to make more than $250 in restitution or to perform more than 40 total hours of services for the victim as restitution.

(5g) SUPERVISED WORK PROGRAM OR OTHER COMMUNITY SERVICE WORK. (a) Order the juvenile to participate in a supervised work program administered by the county department or a community agency approved by the court or other community service work administered by a public agency or nonprofit charitable organization approved by the court.

(am) The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the juvenile reasonable compensation reflecting a reasonable market value of the work performed or it may consist of uncompensated community service work. Community service work may be in lieu of restitution only if also agreed to by the county department, community agency, public agency or nonprofit charitable organization and by the person to whom the restitution is owed. The court may use any available resources, including any community service work program, in ordering the juvenile to perform community service work.

(b) The supervised work program or other community service work shall be of a constructive nature designed to promote the

rehabilitation of the juvenile, shall be appropriate to the age level and physical ability of the juvenile and shall be combined with counseling from a member of the staff of the county department, community agency, public agency or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the juvenile's regular attendance at school. Subject to par. (d), the amount of work required shall be reasonably related to the seriousness of the juvenile's offense.

(c) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a supervised work program or other community service work may, for purposes of performing the supervised work or other community service work, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a supervised work program or other community service work is exempt from the permit requirement under **s.** 103.70 (1).

(d) Under this subsection, a juvenile who is under 14 years of age may not be required to perform more than 40 total hours of supervised work or other community service work, except as provided in subs. (13r) and (14t).

(5m) COMMUNITY SERVICE WORK PROGRAM. Order the juvenile to participate in a youth corps program, as defined in s. 16.22 (1) (dm) or another community service work program, if the sponsor of the program approves the juvenile's participation in the program.

(5r) VICTIM–OFFENDER MEDIATION PROGRAM. Order the juvenile to participate in a victim–offender mediation program if the victim of the juvenile's delinquent act agrees.

(6) SPECIAL TREATMENT OR CARE. (a) If the juvenile is in need of special treatment or care, as identified in an evaluation under s. 938.295 and the report under s. 938.33 (1), order the juvenile's parent to provide the special treatment or care.

(am) An order of special treatment or care under this subsection may include an order committing the juvenile to a county department under **s.** 51.42 or 51.437 for special treatment or care in an inpatient facility, as defined in s. 51.01 (10), if the evaluation under **s.** 938.295 and the report under s. 938.33 (1) indicate all of the following:

1. That the juvenile has an alcohol or other drug abuse impairment.

2. That the juvenile is a proper subject for treatment and is in need of inpatient treatment because appropriate treatment is not available on an outpatient basis.

(ap) ***An*** order under par. (am) is subject to all of the following:

1. The commitment may total not more than 30 days.

2. The use of commitment to a county department under **s.** 51.42 or 51.437 as a disposition under par. (am) is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 *(5)* authorizing the use of that disposition.

(ar) If the parent fails or **is** financially unable to provide the special treatment or care ordered under par. (a) or (am), the court may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If the court orders a county department under s. 51.42 or 51.437 to provide special treatment or care under par. (a) or (am), the provision of that special treatment or care shall be subject to conditions specified in ch. 51, except that an order under par. (am) may not be extended. An order of special treatment or care under this subsection may not include an order for the administration of psychotropic medication.

(b) Payment for alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 938.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 938.362.

(6m) INTEGRATED SERVICE PLAN. If the report prepared under **s.** 938.33 (1) recommends that the juvenile **is** in need of an integrated service plan and if an integrated service program under s. 46.56 has been established in the county, order that an integrated service plan be developed and implemented.

(6r) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the juvenile to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the county and the approved treatment facility, or with the written informed consent of the juvenile or the juvenile's parent if the juvenile has not attained the age of 12, report to the agency primarily responsible for providing services to the juvenile as to whether the juvenile is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, the court may order the juvenile to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the county and the education program, or with the written informed consent of the juvenile or the juvenile's parent if the juvenile has not attained the age of 12, report to the agency primarily responsible for providing services to the juvenile about the juvenile's attendance at the program.

(c) Payment for the court–ordered treatment or education under this subsection in counties that have a pilot program under **s.** 938.547 shall be in accordance with s. 938.361.

(6s) DRUG TESTING. If the report under **s.** 938.33 (1) indicate that the juvenile is in need of treatment for the use or abuse of controlled substances or controlled substance analogs, order the juvenile to submit to drug testing under a drug testing program that the department shall promulgate by rule.

(7d) EDUCATION PROGRAM. (a) Except as provided in par. (d), order the juvenile to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under **s.** 118.153, provided by the school district in which the juvenile resides.

2. Pursuant to a contractual agreement with the school district in which the juvenile resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Pursuant to a contractual agreement with the school district in which the juvenile resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the juvenile resides and that complies with 42 USC 2000d.

4. Pursuant to a contractual agreement with the school district in which the juvenile resides, an educational program provided by a technical college district located in the school district in which the juvenile resides.

(b) The court shall order the school board to disclose the juvenile's pupil records, as defined under **s.** 118.125 (1) (d), to the county department or licensed child welfare agency responsible for supervising the juvenile, as necessary to determine the juvenile's compliance with the order under par. (a).

(c) The court shall order the county department or licensed child welfare agency responsible for supervising the juvenile to disclose to the school board, technical college district board or private, nonprofit, nonsectarian agency which is providing an educational program under par. (a) 3. records or information about the juvenile, as necessary to assure the provision of appropriate educational services under par. (a).

(d) This subsection does not apply to a juvenile who is a child with a disability, as defined under s. 115.76 *(5)*.

(7g) EXPERIENTIAL EDUCATION. Order the juvenile to participate in a wilderness challenge program or other experiential education program.

(7j) YOUTH REPORT CENTER. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other non-school days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Subsection (5g) applies to any community service work performed by a juvenile under this subsection.

(7n) JUVENILE OFFENDER EDUCATION PROGRAM. Order the juvenile to participate in an educational program that is designed to deter future delinquent behavior by focusing on such issues as

decision making, assertiveness instead of aggression, family and peer relationships, self–esteem, identification and expression of feelings, alcohol and other drug abuse recognition and errors in thinking and judgment.

(7r) VOCATIONAL TRAINING. If the report under s. 938.33 (1) recommends that the juvenile is in need of vocational assessment, counseling and training, order the juvenile to participate in that assessment, counseling and training.

(7w) DAY TREATMENT PROGRAM. If the report under s. 938.33 (1) indicates that the juvenile has specialized educational needs, order the juvenile to participate in a day treatment program.

(8) FORFEITURE. Impose a forfeiture based upon a determination that this disposition is in the best interest of the juvenile and in aid of rehabilitation. The maximum forfeiture that the court may impose under this subsection for a violation by a juvenile is the maximum amount of the fine that may be imposed on an adult for committing that violation or, if the violation is applicable only to a person under 18 years of age, $100. Any such order shall include a finding that the juvenile alone is financially able to pay the forfeiture and shall allow up to 12 months for payment. If the juvenile fails to pay the forfeiture, the court may vacate the forfeiture and order other alternatives under this section, in accordance with the conditions specified in this chapter; or the court may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years. If the court suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license and forward it to the department which issued the license, together with a notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the period of suspension, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then return the license to the juvenile. Any recovery under this subsection shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

(8d) DELINQUENCY VICTIM AND WITNESS ASSISTANCE SURCHARGE. (a) In addition to any other disposition imposed under this section, the court shall impose a delinquency victim and witness assistance surcharge of $20.

(b) The clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer under s. 59.25 (3) (f) 2.

(c) If a juvenile placed in a secured correctional facility or a secured child caring institution fails to pay the surcharge under par.(a), the department shall assess and collect the amount owed from the juvenile's wages or other moneys. If a juvenile placed in a secured group home fails to pay the surcharge under par.(a), the county department shall assess and collect the amount owed from the juvenile's wages or other moneys. Any amount collected shall be transmitted to the state treasurer.

(d) If the juvenile fails to pay the surcharge under par.(a), the court may vacate the surcharge and order other alternatives under this section, in accordance with the conditions specified in this chapter; or the court may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 30 days nor more than 5 years. If the court suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license and forward it to the department which issued the license, together with a notice of suspension clearly stating that the suspension is for failure to pay a surcharge imposed by the court. If the surcharge is paid during the period of suspension, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then return the license to the juvenile.

(11) TRANSFER TO FOREIGN COUNTRIES UNDER TREATY. If a treaty is in effect between the United States and a foreign country, allowing a juvenile adjudged delinquent who is a citizen or national of the foreign country to be transferred to the foreign country and if the juvenile and the juvenile's parent, guardian and legal custodian agree, request the governor to commence a transfer of the juvenile to the juvenile's country.

(13r) VIOLENT VIOLATION IN A SCHOOL ZONE. (a) If the juvenile is adjudicated delinquent under a violation of a violent crime law specified in s. 939.632 (1) (e) in a school zone, as defined in s. 939.632 (1) (d), the court may require that the juvenile participate for 100 hours in a supervised work program under sub.(5g) or perform 100 hours of other community service work.

(b) The court shall not impose the requirement under par.(a) if the court determines that the person would pose a threat to public safety while completing the requirement.

(13t) GRAFFITI VIOLATION. If the juvenile is adjudicated delinquent under a violation of s. 943.017, the court may require that the juvenile participate for not less than 10 hours nor more than 100 hours in a supervised work program under sub.(5g) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the juvenile has not attained 14 years of age the maximum number of hours is 40.

(14d) HATE VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have committed a violation under circumstances in which, if committed by an adult, the adult would be subject to a penalty enhancement under s. 939.645, the court may order any one or more of the following dispositions:

(a) That the juvenile make restitution under sub.(5).

(b) That the juvenile participate in a supervised work program or other community service work under sub.(5g) or (5m).

(c) That the juvenile participate in a victim–offender mediation program under sub.(5r) or otherwise apologize to the victim.

(d) That the juvenile participate in an educational program under sub.(7n) that includes sensitivity training or training in diversity.

(14m) VIOLATION INVOLVING A MOTOR VEHICLE. Restrict or suspend the operating privilege, as defined in s. 340.01 (40), of a juvenile who is adjudicated delinquent under a violation of any law in which a motor vehicle is involved. If the court suspends a juvenile's operating privilege under this subsection, the court shall immediately take possession of the suspended license and forward it to the department of transportation together with a notice stating the reason for and duration of the suspension. If the court limits a juvenile's operating privilege under this subsection, the court shall immediately notify the department of transportation of that limitation.

(14p) COMPUTER VIOLATION. If the juvenile is found to have violated s. 943.70, place restrictions on the juvenile's use of computers.

(14r) VIOLATIONS RELATING TO CONTROLLED SUBSTANCES OR CONTROLLED SUBSTANCE ANALOGS.

(a) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated ch. 961, the court shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with the notice of suspension clearly stating that the suspension or revocation is for a violation of ch. 961.

(b) This subsection does not apply to violations under s. 961.573 (2), 961.574 **(2)** or 961.575 (2) or a local ordinance that strictly conforms to one of those statutes.

(c) If the juvenile's license or operating privilege is currently suspended or revoked or if the juvenile does not currently possess a valid operator's license issued under ch. 343, the suspension under this subsection is effective on the date on which the juvenile is first eligible and applies for issuance or reinstatement of an operator's license under ch. 343.

(14s) POSSESSION OF CONTROLLED SUBSTANCES OR CONTROLLED SUBSTANCE ANALOGS. (a) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated s. 961.41 (3g), the court shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500.

(am) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated **s.** 961.41 (1) or (1m), the court shall order one of the following penalties:

1. For a first violation, a forfeiture of not less than $250 nor more than $500.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500.

(b) After ordering a disposition under par.(a) or (am), the court, with the agreement of the juvenile, may enter an additional order staying the execution of the dispositional order. If the court stays a dispositional order under this paragraph, the court shall enter an additional order requiring the juvenile to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under **s.** 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an assessment conducted under subd. 1. or **s.** 938.295 (1) recommends treatment.

3. Participate in a court–approved pupil assistance program provided by the juvenile's school board or an alcohol or other drug abuse education program. The juvenile's participation in a court–approved pupil assistance program under this subdivision is subject to the approval of the juvenile's school board.

(c) If the approved treatment facility, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that the juvenile has submitted to an assessment under this subsection and that the juvenile does not need treatment, intervention or education, the court shall notify the juvenile of whether or not the original dispositional order will be reinstated.

(d) If the juvenile completes the alcohol or other drug abuse treatment program, court–approved pupil assistance program or court–approved alcohol or other drug abuse education program, the approved treatment facility, court–approved pupil assistance program or court–approved alcohol or other drug abuse education program shall, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notify the agency primarily responsible for providing services to the juvenile that the juvenile has complied with the order and the court shall notify the juvenile of whether or not the original dispositional order will be reinstated.

(e) If an approved treatment facility, court–approved pupil assistance program or court–approved alcohol or other drug abuse education program, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that a juvenile is not participating in, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment program, a court–approved pupil assistance program or a court–approved alcohol or other drug abuse education program, the court shall impose the original disposition under par.(a) or (am).

(14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under a violation of **s.** 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II under ch. 961, a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or ketamine or flunitrazepam while in or on the premises of a scattered–site public housing project, as defined in **s.** 961.01 (20i), while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, as defined in **s.** 961.01 (12m), a multiunit public housing project, as defined in **s.** 961.01 (14m), a swimming pool open to members of the public, a youth center, as defined in **s.** 961.01 (22), or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in **s.** 340.01 (56), the court shall require that the juvenile participate for 100 hours in a supervised work program or other community service work under sub.(5g).

(15) DEOXYRIBONUCLEIC ACID ANALYSIS REQUIREMENTS. (a) 1. If the juvenile is adjudicated delinquent on the basis of a violation of **s.** 940.225, 948.02 (1) or (2) or 948.025, the court shall require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

2. Except as provided in subd. 1., if the juvenile is adjudicated delinquent on the basis of any violation under ch. 940, 944 or 948 or **ss.** 943.01 to 943.15, the court may require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

3. The results from deoxyribonucleic acid analysis of a specimen under subd. 1. or 2. may be used only as authorized under **s.** 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with **s.** 165.77 (3).

(b) The department of justice shall promulgate rules providing procedures for juveniles to provide specimens under par.(a) and for the transportation of those specimens to the state crime laboratories under **s.** 165.77.

Cross Reference: See also ch. Jus 9, Wis. adm. code.

(15m) SEX OFFENDER REPORTING REQUIREMENTS. (am) Except as provided in par.(bm), if the juvenile is adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy or attempt to commit any violation, under ch. 940, 944 or 948 or **ss.** 943.01 to 943.15, the court may require the juvenile to comply with the reporting requirements under **s.** 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the juvenile report under **s.** 301.45.

(bm) If the juvenile is adjudicated delinquent on the basis of a violation, or the solicitation, conspiracy, or attempt to commit a violation, of **s.** 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of **s.** 940.30 or 940.31 if the victim was a minor and the juvenile was not the victim's parent, the court shall require the juvenile to comply with the reporting requirements under **s.** 301.45 unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under **s.** 301.45 (1m).

(c) In determining under par.(am) whether it would be in the interest of public protection to have the juvenile report under s. 301.45, the court may consider any of the following:

1. The ages, at the time of the violation, of the juvenile and the victim of the violation.

2. The relationship between the juvenile and the victim of the violation.

3. Whether the violation resulted in bodily harm, as defined in **s.** 939.22 (4), to the victim.

4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the juvenile will commit other violations in the future.

7. Any other factor that the court determines may be relevant to the particular case.

(d) If the court orders a juvenile to comply with the reporting requirements under **s.** 301.45, the court may order the juvenile to continue to comply with the reporting requirements until his or her death.

(e) If the court orders a juvenile to comply with the reporting requirements under **s.** 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding of delinquency on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding of delinquency has been reversed, set aside or vacated.

(16) STAY OF ORDER. After ordering **a** disposition under this section, enter an additional order staying the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court. If

the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed, unless the juvenile signs a written waiver of any objections to imposing the original dispositional order and the court approves the waiver. If a hearing is held, the court shall notify the parent, juvenile, guardian and legal custodian, all parties bound by the original dispositional order and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing at least 3 days before the hearing. If all parties consent, the court may proceed immediately with the hearing. The court may not impose the original dispositional order unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.

History: 1995 a. **77, 352, 440, 448; 1997** a. **27, 35, 36, 84, 130, 164, 183, 205; 1999** a. **9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109.**

Cross Reference: See also ch. DOC **392,** Wis. adm. code. Sub.(4h) does not encompass similar offenses from other jurisdictions. A juvenile may not be placed in the serious juvenile offender program on the basis that the juvenile is adjudicated delinquent for violating similar statutes in other jurisdictions. State v. David L.W. **213** Wis. 2d **277,570** N.W.2d **252** (Ct. App. **1997).**

Sub.(16) permits a court to stay imposition of a dispositional order, including revisions. Failure to comply can trigger commencement of the stayed portion commencing when the stay is lifted and terminating upon the completion of the term stated in the stayed order. State v. Kendall G. **2001** WI App **95,243** Wis. 2d **67,625** Wis. 2d **918.**

Placement in the serious juvenile offender program under sub.(4h) must occur **at** an original disposition. It is not a disposition to extend, revise, or change a placement already in effect State v. Terry T. **2002** WI App **81, 251** Wis. 2d **462, 643** N.W.2d **175.**

Dispositions: Increased Options. Wis. Law. Apr. **1996.**

CHAPTER 940
CRIMES AGAINST LIFE AND BODILY SECURITY

BODILY SECURITY

940.22 Sexual exploitation by therapist; duty to report.

(1) DEFINITIONS. In this section: (a) "Department" means the department of regulation and licensing.

(b) "Physician" has the meaning designated in s. 448.01 (5).

(c) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(d) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(e) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(f) "Reporter" means a therapist who reports suspected sexual contact between his or her patient or client and another therapist.

(g) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.

(i) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) SEXUAL CONTACT PROHIBITED. Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist−patient or therapist−client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class F felony. Consent is not an issue in an action under this subsection.

NOTE: Sub. (2) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(2) SEXUAL CONTACT PROHIBITED. Any person who is or who holds himself or herself out to he a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist−patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class C felony. Consent is not an issue in an action under this subsection.

(3) REPORTS OF SEXUAL CONTACT. (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub.(2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the'patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par.(a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board or affiliated credentialing board.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1. is not applicable.

(c) A report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub.(2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par.(a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars.(a) to (c) is guilty of a Class A misdemeanor.

(4) CONFIDENTIALITY OF REPORTS AND RECORDS. (a) All reports and records made from reports under sub.(3) and maintained by the department, examining boards, affiliated credentialing boards, district attorneys and other persons, officials and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a victim or alleged victim of sexual contact by a therapist shall not be disclosed by a reporter or by persons who have received or have access to a report or record unless disclosure is consented to in writing by the victim or alleged victim. The report of information under sub.(3) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 **(4)** and as required under s. 146.82. Reports and records may be disclosed only to appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(b) 1. The department, a district attorney, an examining board or an affiliated credentialing board within this state may exchange information from a report or record on the same subject.

2. If the department receives 2 or more reports under sub.(3) regarding the same subject, the department shall communicate information from the reports to the appropriate district attorneys and may inform the applicable reporters that another report has been received regarding the same subject.

3. If a district attorney receives 2 or more reports under sub.(3) regarding the same subject, the district attorney may inform the applicable reporters that another report has been received regarding the same subject.

4. After reporters receive the information under subd. 2. or 3., they may inform the applicable patients or clients that another report was received regarding the same subject.

(c) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(d) Whoever intentionally violates this subsection, or permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, is guilty of a Class A misdemeanor.

(5) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report or record under this section is immune from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal action or proceeding, any person reporting under this section is presumed to be acting in good faith. The immunity provided under this subsection does not apply to liability resulting from sexual contact by a therapist with a patient or client.

History: 1983 a. 434; 1985 a. 275; 1987 a. 352,380; 1991 a. 160; 1993 a. 107; 1995 a. 300; **2001 a. 109.**

This section applies to **persons engaged in professional therapist−patient relationships. A teacher who conducts** informal **counseling is** not **engaged as a professional therapist. State v.** *Ambrose*, **196** Wis. **2d 768, 540** N.W.2d **208 (Ct. App. 1995).**

940.225 Sexual assault.

(1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class C felony:

NOTE: Sub. (2) (intro.) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(2) SECOND DECREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class BC felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant *to* a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub.(5) (b) 2. with a person without the consent of that person is guilty of a Class G felony.

NOTE: Sub. (3) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(3) THIRD DEGREE **SEXUAL ASSAULT.** Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class D felony. Whoever bas sexual contact in the manner described in sub. *(5)* (b) **2.** with a person without the consent of that person is guilty of a Class D felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub.(3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(4) CONSENT. "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of sub.(2) (c), (cm), (d) and (g). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2): (b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section: (ag) "Inpatient facility" has the meaning designated in s. 51.01 (10).

(ai) "Intoxicant" means any controlled substance, controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. "Intoxicant" does not include any alcohol beverage.

(am) "Patient" means any person who does any of the following: 1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program or from a person providing services under contract with a facility or program. 2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under **s.** 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under **s.** 940.295 (2) (b), (c), (h) or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(6) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1975 c. 184, 421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309,310,311; 1985 a. 134; 1987 a. 245,332,352; 1987 a. 403 ss. 235,236, 256; 1993 a. 445; 1995 a. 69; 1997 a. 220; 2001 a. 109.

Legislative Council Note, 1981: Presently, [in sub.(5) (a)] the definition of "sexual intercourse" in the sexual assault statute includes any intrusion of any part of a person's body or of any object into the genital or anal opening of another person. This proposal clarifies that the intrusion of the body part or object may be caused by the direct act of the offender (defendant) or may occur as a result of an act by the victim which is done in compliance with instructions of the offender (defendant). [Bill 630–S] Failure to resist is not consent under sub.(4). State v. Clark, 87 Wis. 2d 804, 275 N.W.2d 715 (1979).

Injury by conduct regardless of life is not a lesser–included crime of first–degree sexual assault. Hagenkord v. State, 94 Wis. 2d 250,287 N.W.2d 834 (Ct. App. 1979).

Separate acts of sexual intercourse, each different in kind from the others and differently defined in the statutes, constitute separate chargeable offenses. State v. Eisch, 96 Wis. 2d 25,291 N.W.2d 800 (1980).

The trial court did not err in denying the accused's motions to compel psychiatric examination of the victim and for discovery of the victim's past addresses. State v. Lederer. 99 Wis. 2d 430.299 N.W.2d 457 (Ct. App. 1980).

The verdict was unanimous in a rape case even though the jury was not required to specify whether the sexual assault was vaginal or oral. State v. Lomagro, 113 Wis. 2d 582.335 N.W.2d 583 (1983).

A jury instruction that touching the "vaginal area" constituted sexual contact was correct. State v. Morse, 126 Wis. 2d 1, 374 N.W.2d 388 (Ct. App. 1985).

"Unconscious" as used in sub.(2) (d) is a loss of awareness that may be caused by sleep. State **v.** Curtis, 144 Wis. 2d 691,424 N.W.2d 719 (Ct App. 1988).

The probability of exclusion and paternity are generally admissible in a sexual assault action in which the assault allegedly resulted in the birth of a child, but the probability of paternity is not generally admissible. HLA and red blood cell test results showing the paternity index and probability of exclusion were admissible statistics. State v. Hartman, 145 Wis. 2d 1,426 N.W.2d 320 (1988).

Attempted fourth–degree sexual assault is not an offense under Wisconsin law. State v. Cvorovic, 158 Wis. 2d 630,462 N.W.2d 897 (Ct. App. 1990).

The "use or threat of force or violence" under sub.(2) (a) does not require that the force be directed toward compelling the victim's submission, but includes forcible contact or the force used as the means of making contact. State v. Bonds. 165 Wis. 2d 27, 477 N.W.2d 265 (1991).

A dog may be a dangerous weapon under sub.(1) (b). State v. Sinks, 168 Wis. 2d 245, 483 N.W.2d 286 (Ct. App. 1992).

Convictions under both subs.(1) (d) and (2) (d) did not violate doublejeopardy. State v. Sauceda. 168 Wis. 2d 486. **485** N.W.2d 1 (1992). **A** defendant's lack of intent to **make** a victim believe that he was armed was irrelevant in finding a violation of sub.(1) (b); if the victim's belief that the defendant was armed was reasonable, that is enough. State v. Hubanks, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Sub.(2) (d) is not unconstitutionally vague. Expert evidence regarding sleep based solely on a hypothetical situation similar, but not identical, to the facts of the case was inadmissible. State v. Pittman, 174 Wis. 2d 255, 496 N.W.2d 74 (1993).

Convictions under both sub.(2) (a) and (e) did not violate double jeopardy. State v. Selmon, 175 Wis. 2d 155,877 N.W.2d 498 (Ct App. 1993).

"Great bodily harm" is a distinct element under sub.(1) (a) and need not be caused by the sexual act State v. Schambow, 176 Wis. 2d 286, N.W.2d (Ct. App. 1993).

Intent is not an element of sub.(2) (a); lack of an intent element does not render this provision constitutionally invalid. State v. Neumann, 179 Wis. 2d 687, 508 N.W.2d 54 (Ct. App. 1993).

A previous use of force, and the victim's resulting fear, was an appropriate basis for finding that a threat of force existed under sub.(2) (a). State v. Speese, 191 Wis. 2d 205, 528 N.W.2d 63 (Ct. App. 1995).

Violation of any of the provisions of this section does not immunize the defendant from violating the same or another provision in the course of sexual misconduct Two acts of vaginal intercourse are sufficiently different in fact to justify separate charges under sub.(1) (d). State v. Kruzycki, 192 Wis. 2d 509,531 N.W.2d 429 (Ct. App. 1995).

Sub.(2) (c) is not unconstitutionally vague. State v. Smith, 215 Wis. 2d 84, 572 N.W.2d 496 (Ct App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not be informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI 6,232 Wis. 2d 561,605 N.W.2d 199.

Conviction on 2 counts of rape, for acts occurring 25 minutes apart in the same location, did not violate doublejeopardy. Harrell v. Israel, 478 F. Supp. 752 (1979).

A conviction for attempted 1st degree sexual assault based on circumstantial evidence did not deny due process. Upshaw v. Powell, 478 F. Supp. 1264 (1979).

CHAPTER 948

CRIMES AGAINST CHILDREN

Cross Reference: See definitions in s 939 22

948.01 Definitions. In this chapter, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

(1) "Child" means a person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, "child" does not include a person who has attained the age of 17 years.

(1d) "Exhibit," with respect to a recording of an image that is not viewable in its recorded form, means to convert the recording of the image into a form in which the image may be viewed.

(1g) "Joint legal custody" has the meaning given in s. 767.001 (1s).

(1r) "Legal custody" has the meaning given in s. 767.001 *(2)*.

(2) "Mental harm" means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. "Mental harm" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the nonnal range for the child's age and stage of development.

(3) "Person responsible for the child's welfare" includes the child's parent; stepparent; guardian; foster parent; treatment foster parent; an employee of a public or private residential home, institution or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child.

(3m) "Physical placement" has the meaning given in s. 767.001 *(5)*.

(3r) "Recording" includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound.

(4) "Sadomasochistic abuse" means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification.

(5) "Sexual contact" means any of the following:

(a) Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant.

(b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(6) "Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(7) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, meaning vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by a person or upon the person's instruction. The emission of semen is not required;

(b) Bestiality;

(c) Masturbation;

(d) Sexual sadism *or* sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or

(e) Lewd exhibition of intiinate parts.

History: 1987 a. 332; 1989 a. 31; 1993 a. 446; 1995 a. 27, 67, 69, 100,214; 2001 a. 16.

Instructions were proper that told the jury that "lewd" under sub. (7) (e), when applied to photographs, is not mere nudity but requires the display of the genital area and sexual suggestiveness as determined by the jury in the use of common sense. State v. Petrone, 161 Wis. 2d 530,468 N.W.2d 676 (1991).

When a defendant allows sexual contact initiated by a child, the defendant is guilty of intentional touching as defined in sub. *(5)*. State v. Traylor, 170 Wis. 2d 393,489 N.W.2d 626 (Ct. App. 1992).

The definition of "parent" in sub. (3) is all-inclusive; a defendant whose paternity was admitted but had never been adjudged was a "parent." State v. Evans, 171 Wis. 2d 471, 492 N.W.2d 141 (1992).

A live-in boyfriend can be a person responsible for the welfare of a child under sub. (3) if he was used by the child's legal guardian as a caretaker for the child. State v. Sostre, 198 Wis. 2d 409,542 N.W.2d 774 (1996).

The phrase "by the defendant or upon the defendant's instruction" in sub. (6) modifies the entire list of acts and establishes that for intercourse to occur the defendant either had to perform one of the actions on the victim or instruct the victim to perform one of the actions on himself or herself. State v. Olson, 2000 WI App 158,238 Wis. 2d 74, 616 N.W.2d 144.

948.015 Other offenses against children. In addition to the offenses under this chapter, offenses against children include, but are not limited to, the following:

(1) Sections 103.19 to 103.32 and 103.64 to 103.82, relating to employment of minors.

(2) Section 118.13, relating to pupil discrimination.

(3) Section 125.07, relating to furnishing alcohol beverages to underage persons.

(4) Section 253.11, relating to infant blindness.

(5) Section 254.12, relating to applying lead-bearing paints or selling or transferring a fixture or other object containing a lead-bearing paint.

(6) Sections 961.01 (6) and (9) and 961.49, relating to delivering and distributing controlled substances or controlled substance analogs to children.

(7) Section 444.09 (4), relating to boxing.

History: 1987 a. 332; 1989 a. 31; 1993 a. 27; 1995 a. 448.

948.02 Sexual assault *of* a child. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B felony.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.

NOTE: Sub. **(2)** is shown as amended **eff. 2–1–03** by **2001** Wis. Act **109. Prior** to **2–1–03** it reads:

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class **BC** felony.

(3) FAILURE TO ACT. **A** person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class **F** felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

NOTE: Sub. **(3)** is shown as amended **eff. 2–1–03** by **2001** Wis. Act **109.** Prior to **2–1–03** it reads:

(3) FAILURE TO ACT. A person responsible for the welfare of a child who has not attained the age of **16** years is guilty of a Class **C** felony if that person has knowledge that another person intends to have, is having or has bad sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

(3m) PENALTY ENHANCEMENT; SEXUAL ASSAULT BY CERTAIN PERSONS. If a person violates sub. (1) or (2) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

NOTE: Sub. **(3m)** is repealed eff. **2–1–03 by 2001 Wis.** Act **109.**

(4) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(5) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1987 a. 332; 1989 a. 31; 1995 a. 14, 69; 2001 a. 109.

Relevant evidence in child sexual assault cases is discussed. In Interest of Michael R.B. 175 Wis. 2d 713, 499 N.W.2d **641** (1993).

Limits relating to expert testimony regarding child sex abuse victims is discussed. State v. Hernandez, 192 Wis. 2d 251, 531 N.W.2d 348 (Ct. App. 1995).

The criminalization, under sub. (2), of consensual sexual relations with a child does not violate the defendant's constitutionally protected privacy rights. State v. Fisher. 211 Wis. 2d 664, 565 N.W.2d 565 (Ct. App. 1997).

Second degree sexual assault under sub. (2) is a lesser included offense of first degree sexual assault under sub. (1). State v. Moua, 215 Wis. 2d 510, 573 N.W.2d 210 (Ct. App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not be informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199.

Expert evidence of sexual immaturity is relevant to a preadolescent's affirmative defense that he or she is not capable of having sexual contact with the purpose of becoming sexually aroused or gratified. State v. Stephen T. 2002 WI App 3, 250 Wis. 2d 26, 643 N.W.2d 151.

The constitutionality of this statute is upheld. Sweeney v. Smith, 9 F. Supp. 2d 1026 (1998).

948.025 Engaging in repeated acts of sexual assault *of* the same child. (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of:

(a) **A** Class B felony if at least **3** of the violations were violations of s. 948.02 (1).

(b) **A** Class C felony if fewer than 3 of the violations were violations of s. 948.02 (1).

NOTE: Sub. **(1)** is shown as affected **eff. 2–1–03** by **2001** Wis. Act **109.** Prior to **2–1–03** it reads:

(1) Whoever commits **3** or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of a Class **B** felony.

(2) (a) If an action under sub. (1j (a) is tried to a **jury,** in order to find the defendant guilty the members of the **jury** must unanimously agree that at least 3 violations of s. 948.02 (1) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(b) If an action under sub. (1) (bj is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) or (2) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) or (2).

NOTE Sub. **(2)** is shown as affected ***eff.*** **2–1–03** by **2001** Wis. Act 109. Prior to **2–1–03** it reads:

(2) If an action under sub. (1) is tried to a jury. in order to find the defendant guilty the members of the jury must unanimously agree that at least **3** violations occurred within the time period applicable under sub. **(1)** but need not agree on which acts constitute the requisite number.

(2m) If a person violates sub. (1) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

NOTE: Sub. (2m) is repealed ***eff.*** **2–1–03 by 2001** Wis. Act 109.

(3) The state may not charge in the same action a defendant with a violation of this section and with a felony violation involving the same child under ch. 944 or a violation involving the same child under s. 948.02, 948.05, 948.06, 948.07, 948.075, 948.08, 948.10, 948.11, or 948.12, unless the other violation occurred outside of the time period applicable under sub. (1). This subsection does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this section.

History: 1993 a. 227; 1995 a. 14; 2001 a. 109.

This section does not violate the right to a unanimous verdict or to due process. State v. Johnson. 2001 WI 52, 243 Wis. 2d 365, 627 N.W. 2d 455.

948.03 Physical abuse *of* a child. (1) DEFINITIONS. In this section, "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class E felony.

(b) Whoever intentionally causes bodily harm to a child is guilty of a Class H felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which crcatcs a high probability of great bodily harm is guilty of a Class **F** felony.

NOTE: Sub. **(2)** is shown as amended eff. **2–1–03** by 2001 Wis. Act **109. Prior** to **2–1–03** it reads:

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class C felony.

(h) Whoever intentionally causes bodily harm to a child is gnilty of a Class D felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is gnilty of a Class C felony.

(3) RECKLESS CAUSATION OF BODILY HARM. (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class G felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class I felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class H felony.

NOTE: Sub. **(3)** is shown as amended eff. 2–1–03 by 2001 Wis. Act **109.** Prior to **2–1–03** it reads:

(3) RECKLESS **CAUSATION OF BODILY HARM.** (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class D felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class E felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class D felony.

(4) FAILING TO ACT TO PREVENT BODILY HARM. (a) A person responsible for the child's welfare is guilty of a Class F felony if that pcrson has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is guilty of a Class H felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

NOTE: Sub. **(4)** is shown as amended eff. **2–1–03** by **2001** Wis. Act **109.** Prior to **2–1–03** it reads:

(4) **FAILING TO ACT TO PREVENT BODILY HARM.** (a) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the hodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is gnilty of a Class D felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

(5) PENALTY ENHANCEMENX ABUSE **BY** CERTAIN PERSONS. If a person violates sub. ***(2)*** or (3) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be increased by not more than 5 years.

NOTE: Sub. (5) is repealed **eff. 2–1–03** by **2001** Wis. Act 109.

(6) TREATMENT THROUGH PRAYER. **A** person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s. 48.981 (3) (c) 4. or 448.03 (6) in lieu of medical or surgical treatment.

History: 1987 a. 332; 2001 a. 109.

To obtain a conviction for aiding and abetting a violation of sub. (2) **or** (3). the state must prove conduct that as a matter of objective fact aids another in executing the crime. State v. Rundle, 176 Wis. 2d 985, 500 N.W.2d 916 (Ct. App. 1993).

A live–in boyfriend can he a person responsible for the welfare of a child under sub. (5) if he was used by the child's legal guardian as a caretaker **for** the child. State v. Sostre, 198 Wis. 2d 409.542 N.W.2d 774 (1996).

948.04 Causing mental harm to a child. (1) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well–being of the child is guilty of a Class F felony.

NOTE: Soh. (1) is shown as amended **eff. 2–1–03** by **2001** Wis. Act **109.** Prior to **2–1–03** it reads:

(1) Whoever is exercising temporary or permanent control **of** a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well–being of the child is guilty of a Class C felony.

(2) A person responsible for the child's welfare is guilty of a Class F felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

NOTE: Sub. (2) is shown as amended **eff. 2–1–03** by **2001** Wis. Act **109.** Prior to **2–1–03** it reads:

(2) A person responsible for the child's welfare is guilty of a Class C felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm hy the other person or facilitates the mental harm to the child that is caused by the other person.

History: 1987 a. 332; 2001 a. 109.

948.05 Sexual exploitation of a child. (1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class F felony:

NOTE: Sub. **(1)** (intro.) is shown as amended eff. **2–1–03** by **2001 Wis.** Act 109. Prior to **2–1–03** it reads:

(1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child is guilty of a Class C felony:

(a) Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct.

(b) Records or displays in any way a child engaged in sexually explicit conduct.

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct is guilty of a Class F felony if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.

NOTE: Sub. (1m) is shown as amended eff. **2–1–03** by **2001** Wis. Act **109.** Prior to **2–1–03** it reads:

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct is gnilty of a Class C felony if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a) or (b) or (1m) is guilty of a Class F felony.

NOTE: Sub. (2) is shown as amended **eff. 2–1–03** by **2001** Wis. Act **109.** Prior to **2–1–03** it reads:

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. **(1)** (a) or (h) or (1m) is guilty of a Class C felony.

(3) It is an affirmative defense to prosecution for violation of sub. (1) (a) or (b) or ***(2)*** if the defendant had reasonable cause to believe that the child had attained the age of 18 years. **A** defendant

who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

History: 1987 a. 332; 1999 a. 3; 2001 a. 16, 109.

"Import" under sub. (1) (c) means bringing in from an external source and does not require a commercial element or exempt personal use. State v. Bruckner, 151 Wis. 2d 833, 447 N.W.2d 376 (Ct. App. 1989).

The purposes of ss. 948.05, child exploitation, and 948.07, child enticement, are distinct and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833.

948.055 Causing a child to view or listen to sexual activity. (1) Whoever intentionally causes a child who has not attained 18 years of age to view or listen to sexually explicit conduct may be penalized as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

(2) Whoever violates sub. (1) is guilty of:

(a) A Class F felony if the child has not attained the age of 13 years.

NOTE Par. (a) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(a) A Class C felony if the child has not attained the age of 13 years.

(b) A Class H felony if the child has attained the age of 13 years but has not attained the age of 18 years.

NOTE: Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. *Prior* to 2–1–03 it reads:

(b) A Class D felony if the child has attained the age of 13 years but has not attained the age of 18 years.

History: 1987 a. 334; 1989 a. 359; 1993 a. 218 ss. 6, 7; Stats. 1993 s. 948.055; 1995 a. 67; 2001 a. 109.

948.06 Incest with a child. Whoever does any of the following is guilty of a Class C felony:

NOTE: 948.06 (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

948.06 Incest with a child. Whoever does any of the following is guilty of a Class BC felony:

(1) Marries or has sexual intercourse or sexual contact with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than 2nd cousin; or

(2) Is a person responsible for the child's welfare and:

(a) Has knowledge that another person related to the child by blood or adoption in a degree of kinship closer than 2nd cousin has had or intends to have sexual intercourse or sexual contact with the child;

(b) Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring or being repeated;

(c) Fails to take that action; and

(d) The failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

History: 1987 a. 332; 1995 a. 69; 2001 a. 109.

948.07 Child enticement. Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class D felony:

NOTE: 948.07 (intm.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

948.07 Child enticement. Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:

(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02 or 948.095.

(2) Causing the child to engage in prostitution.

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.

(4) Recording the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

History: 1987 a. 332; 1995 a. 67, 69, 448, 456; 2001 a. 16, 109.

The penalty scheme of sub. (3) is not unconstitutionally irrational. That the statute, unlike sub. (1), did not distinguish between victims 16 years old or older and other children victims is a matter for the legislature. State v. Hanson, 182 Wis. 2d 481, 513 N.W.2d 700 (Ct. App. 1994).

This section includes the attempted crime, as well as the completed crime, and cannot be combined with the general attempt statute. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999).

The purposes of ss. 948.05, child exploitation, and 948.07, child enticement, are distinct, and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833.

This section creates one crime with multiple modes of commission. The alternate modes of commission are not so dissimilar as to implicate fundamental fairness. As such, a defendant is not entitled to a unanimity instruction. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833.

This section delineates one crime with alternate modes of commission, one of which is attempt to cause a child to to go into a vehicle, building, room, or secluded place. The principles of attempt in s. 939.32 apply. That the intended victims were fictitious constituted an extraneous fact beyond the defendant's control that prevented successful enticement while not excusing the attempt to entice. State v. Koenck, 2001 WI App 93, 242 Wis. 2d 693, 626 N.W.2d 359.

Attempted child enticement may be charged when the intervening extraneous factor that makes the offense an attempted rather than completed crime is that unbeknownst to the defendant, the "victim" is an adult government agent posing as a child. The 1st amendment is not implicated by the application of the child enticement statute to child enticements initiated over the internet as the statute regulates conduct, not speech. State v. Robins, 2002 WI 65, 253 Wis. 2d 298, 647 N.W.2d 287.

948.075 Use of a computer to facilitate a child sex crime. (1) Whoever uses a computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent [to] have sexual contact or sexual intercourse with the individual in violation of s. 948.02 (1) or (2) is guilty of a Class D felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads as shown below. The bracketed language indicates a necessary word that was omitted by Act 109. Corrective legislation is pending.

(1) Whoever uses a computerized Communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent [to] have sexual contact or sexual intercourse with the individual in violation of s. 948.02 (1) or (2) is guilty of a Class BC felony.

(2) This section does not apply if, at the time of the communication, the actor reasonably believed that the age of the person to whom the communication was sent was no more than 24 months less than the age of the actor.

(3) Proof that the actor did an act, other than use a computerized communication system to communicate with the individual, to effect the actor's intent under sub. (1) shall be necessary to prove that intent.

History: 2001 a. 109.

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class D felony.

NOTE: This section is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a Class BC felony.

History: 1987 a. 332; 1995 a. 69; 2001 a. 109.

948.09 Sexual intercourse with a child age 16 or older. Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.

History: 1987 a. 332.

948.095 Sexual assault of a student by a school instructional staff person. (1) In this section:

(a) "School" means a public or private elementary or secondary school.

(b) "School staff' means any person who provides services to a school or a school board, including an employee of a school or

a school board and a person who provides services to a school or a school board under a contract.

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply:

NOTE: Sub. (2) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class D felony if all of the following apply:

(a) The child is enrolled as a student in a school or a school district.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

History: 1995 a. 456; 2001 a. 109.

948.10 Exposing genitals or pubic area. (1) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of a Class A misdemeanor.

(2) Subsection (1) does not apply under any of the following circumstances:

(a) The child is the defendant's spouse.

(b) A mother's breast–feeding of her child.

History: 1987 a. 332; 1989 a. 31, 1995 a. 165.

948.11 Exposing a child to harmful material or harmful descriptions or narrations. (1) DEFINITIONS. In this section:

(ag) "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.

(ar) "Harmful material" means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that is harmful to children; or

2. Any book, pamphlet, magazine, printed matter however reproduced or recording that contains any matter enumerated in subd. 1., or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that, taken as a whole, is harmful to children.

(b) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of children;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and

3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.

(d) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(2) CRIMINAL PENALTIES. (a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

NOTE: Par. (a) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class E felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face–to–face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan.

(am) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

NOTE: Par. (am) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(am) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class E felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face–to–face contact with the child before or during the communication.

(b) Whoever, with knowledge of the character and content of the material, possesses harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child is guilty of a Class A misdemeanor if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face–to–face contact with the child.

(c) It is an affirmative defense to a prosecution for a violation of pars. (a) 2., (am) 2., and (b) 2. if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

(3) EXTRADITION If any person is convicted under sub. *(2)* and cannot be found in this state, the governor or any person performing the functions of governor by authority of the law shall, unless the convicted person has appealed from the judgment of contempt or conviction and the appeal has not been finally determined, demand his or her extradition from the executive authority of the state in which the person is found.

(4) LIBRARIES AND EDUCATIONAL INSTITUTIONS (a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used *to* the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

(b) No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:

1. A public elementary or secondary school.

2. A private school, as defined in s. 115.001 (3r).

3. Any school offering vocational, technical or adult education that:

a. Is a technical college, is a school approved by the educational approval board under s. 45.54 or is a school described in s. 45.54 (1) (e) 6., 7. or 8.; and

b. Is exempt from taxation under section **501** (c) (3) of the internal revenue code, as defined in s. 71.01 (6).

4. Any institution of higher education that is accredited, as described in s. 39.30 (1) (d), and is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).

5. A library that receives funding from any unit of government.

(5) SEVERABILITY. The provisions of this section, including the provisions of sub. (4), are severable, as provided in s. 990.001 (11).

History: 1987 a. 332; 1989 a. 31; 1993 a. 220,399; 1995 a. 27 s. 9154 (1); 1997 a. 27,82:, 1999 a. 9; 2001 a. 16, 104. 109.

This section is not unconstitutionally overbroad. The exemption from prosecution of libraries, educational institutions, and their employees and directors does not violate equal protection rights. State **v.** Thiel, 183 Wis. 2d **505,515** N.W.2d 847 (1994).

The lack of a requirement in sub. (2) (a) that the defendant know the age of the child exposed to the harmful material does not render the statute unconstitutional on its face. State v. Kevin L.C. 216 Wis. 2d 166,576 N.W.2d 62 (Ct. App. 1997).

An individual violates this section if he or she, aware of the nature of the material, knowingly offers or presents for inspection to a specific minor material defined as harmful to children in sub. (1) (b). The personal contact between the perpetrator and the child-victim is what allows the state to impose on the defendant the risk that the victim is a minor. State **v.** Trochinski, 2002 WI 56, 253 Wis. 2d 38, 644 N.W.2d 891.

948.12 Possession of child pornography. (1m) Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of a Class I felony:

NOTE: Sub. (1m) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1m) Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances is guilty of a Class E felony:

(a) The person knows that he or she possesses the material.

(b) The person knows the character and content of the sexually explicit conduct in the material.

(c) The person knows or reasonably should know that the child engaged in sexually explicit conduct has not attained the age of 18 years.

(2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, is guilty of a Class I felony:

NOTE: Sub. (2m) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, is guilty of a Class E felony:

(a) The person knows that he or she has exhibited or played the recording.

(b) Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct.

(c) Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.

History: 1987 a 332; 1995 a. 67; 2001 a. **16,** 109.

A violation of this section must be based on the content of the photograph and how it was produced. Evidence of the location and manner of storing the photo are not properly considered. State v. **A. H.** 211 Wis. 2d 561, 566 N.W.2d 858 (Ct. App. 19971.

For purposes of multiplicity analysis each image possessed can be prosecuted separately. Prosecution is not bawd upon the medium of reproduction. Multiple punishment is appropriate for a defendant who compiled and stored multiple images over time. State v. Multaler, 2002 WI 35,252 Wis. 2d 54,633 N.W.2d 437.

948.13 Child sex offender working with children. (1) In this section, "serious child sex offense" means any of the following:

(a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is under 18 years of age at the time of the offense, or a crime under s. 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.06, 948.07 (1), (2), (3), or (4), or 948.075.

NOTE: Par. (a) is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

(b) A crime under federal law or the law of any other state or, prior to May 7, 1996, under the law of this state that is comparable to a crime specified in par. (a).

(2) (a) Except as provided in pars. (b) and (c), whoever has been convicted of a serious child sex offense and subsequently engages in an occupation or participates in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age is guilty of a Class F felony.

(b) If all of the following apply, the prohibition under par. (a) does not apply to a person who has been convicted of a serious child sex offense until 90 days after the date on which the person receives actual written notice from a law enforcement agency, as defined in s. 165.77 (1) (h), of the prohibition under par. **(a):**

1. The only serious child sex offense for which the person has been convicted is a crime under s. 948.02 (2).

2. The person was convicted of the serious child sex offense before May 7, 2002.

3. The person is eligible to petition for an exemption from the prohibition under sub. (2m) because he or she meets the criteria specified in sub. (2m) (a) 1. and 1m.

(c) The prohibition under par. (a) does not apply to a person who is exempt under a court order issued under sub. (2m).

NOTE: Sub. (2) is shown as affected eff. 2–1–03 by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c). Prior to 2–1–03 it reads:

(2) (a) Except as provided in pars. (b) and (c), whoever has been convicted of a serious child sex offense and subsequently engages in an occupation or participates in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age is guilty of a Class C felony.

(b) If all of the following apply, the prohibition under par. (a) does not apply to a person who has been convicted of a serious child sex offense until 90 days after the date on which the person receives actual written notice from a law enforcement agency, as defined in s. 165.77 (1) (b), of the prohibition under par. (a):

1. The only serious child sex offense tor which the person has been convicted is a crime under s. 948.02 (2).

2. The person was convicted of the serious child sex offense before May 7, 2002.

3. The person is eligible to petition for an exemption from the prohibition under sub. (2m) because he or she meets the criteria specified in sub. (2m) (a) 1. and 1m.

(c) The prohibition under par. (a) does not apply to a person who is exempt under a court order issued under sub. (2m).

(2m) (a) **A** person who has been convicted of a crime under s. 948.02 (2) or 948.025 (1) may petition the court in which he or she was convicted to order that the person be exempt from sub. (2) (a) and permitted to engage in an occupation or participate in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age. The court may grant a petition filed under this paragraph if the court finds that all of the following apply:

1. At the time of the commission of the crime under s. 948.02 (2) or 948.025 (1) the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child with whom the person had sexual contact or sexual intercourse.

1m. The child with whom the person had sexual contact or sexual intercourse had attained the age of 13 but had not attained the age of 16.

2. It is not necessary, in the interest of public protection, to require the person to comply with sub. (2) (a).

(b) A person filing a petition under par. (a) shall send a copy of the petition to the district attorney who prosecuted the person. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's petition to inform the victim of his or her right to make or provide a statement under par. (d).

(c) **A** court may hold a hearing on a petition filed under par. (a) and the district attorney who prosecuted the person may appear at

the hearing. Any hearing that a court decides to hold under this paragraph shall be held no later than 30 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2)(b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2) (a), and that he or she is seeking an exemption under this subsection before the expiration of the 90 -day period under sub. (2) (b).

(d) Before deciding a petition filed under par. (a), the court shall allow the victim of the crime that is the subject of the petition to make a statement in court at any hearing held on the petition or to submit a written statement to the court. A statement under this paragraph must be relevant to the issues specified in par. (a) 1., Im. and 2.

(e) 1. Before deciding a petition filed under par. (a), the court may request the person filing the petition to be examined by a physician, psychologist or other expert approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's petition without prejudice.

2. If a person is examined by a physician, psychologist or other expcrt under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at a hearing held under par. (c). The report shall contain an opinion regarding whether it would be in the interest of public protection to require the person to comply with sub. (2) (a) and the basis for that opinion.

3. A person who is examined by a physician, psychologist or other expert under subd. 1. is responsible for paying the cost of the services provided by the physician, psychologist or other expert, except that if the person is indigent the cost of the services provided by the physician, psychologist or other expcrt shall be paid by the county. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), except that the person shall be considered indigent without another determination under s. 977.07 (1) if the person is represented by the state public defender or by a private attorney appointed under s. 977.08.

(em) A court shall decide a petition no later than 45 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2) (b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2) (a), and that he or she is seeking an exemption under this subsection before the expiration of the 90–day period under sub. (2) (b).

(f) The person who filed the petition under par. (a) has the burden of proving by clear and convincing cvidencc that he or she satisfies the criteria specified in par. (a) 1., 1m. and 2. In deciding whether the person has satisfied the criterion specified in par. (a) 2., the court may consider any of the following:

1. The ages, at the time of the violation, of the person who filed the petition and the victim of the crime that is the subject of the petition.

2. The relationship between the person who filed the petition and the victim of the crime that is the subject of the petition.

3. Whether the crime that is the subject of the petihon resulted in bodily harm to the victim.

4. Whether the victim of the crime that is the subject of the petition suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the person who filed the petition will commit other serious child sex offenses in the future.

6. The report of the examination conducted under par. (e).

7. Any other factor that the court determines may be relevant to the particular case.

(3) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact primarily and directly with children under 16 years of age: teaching children, child care, youth counseling, youth organization, coaching children, parks or playground recreation or school bus driving.

History: 1995 a. 265; 1997 a. 130,220; 1999 a. 3; 2001 a. 97, 109; s. 13.93 (2) (c).

948.20 Abandonment of a child. Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect is guilty of a Class G felony.

NOTE: This section is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

948.20 Abandonment of a child. Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect is guilty of a Class D felony.

History: 1977 c. 173; 1987 a. 332 s. 35; **Stats.** 1987 s. 948.20; 2001 a. 109.

948.21 Neglecting a child. (1) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class D felony.

NOTE: Sub. (1) is shown as amended eff. 2–1-03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of a Class A misdemeanor or, if death is a consequence, a Class C felony.

(2) Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

History: 1987 a. 332; 2001 a. 109.

948.22 Failure to support. (1) In this section:

(a) "Child support" means an amount which a person is ordered to provide for support of a child by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(b) "Grandchild support" means an amount which a person is legally obligated to provide under s. 49.90 (1) (a) 2. and (11).

(c) "Spousal support" means an amount which a person is ordered to provide for support of a spouse or former spouse by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(2) Any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class I felony. A prosecutor may charge a person with multiple counts for a violation under this subsection if each count covers a period of at least 120 consecutive days and there is no overlap between periods.

NOTE: Sub. (2) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) Any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class E felony. A prosecutor may charge a person with multiple counts for a violation under this subsection if each count covers a period of at least 120 consecutive days and there is no overlap between periods.

(3) Any person who intentionally fails for less than 120 consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support under an order, failure to pay the child, grandchild or spousal support payment required under the order.

(b) For a person not subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she has a dependent, failure to provide support equal to at least the amount established by rule by the deparhnent of workforce development under s. 49.22 (9) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01 (2).

(5) Under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person or entity.

(6) Under this section, affirmative defenses include but are not limited to inability to provide child, grandchild or spousal support. A person may not demonstrate inability to provide child, grandchild or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(7) (a) Before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child, grandchild or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. If a court order requiring the defendant to pay child, grandchild or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support.

2. If no court order described under subd. 1. exists, enter such an order. For orders for child or spousal support, the court shall determine the amount of support in the manner required under s. 767.25 or 767.51, regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.25 (1)

(bm) Upon request, the court may modify the amount of child or spousal support payments determined under par. (b) 2. if, after considering the factors listed in s. 767.25 (lm), regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.25 (1), the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or to either of the child's parents.

(c) An order under par. (a) or (b), other than an order for grandchild support, constitutes an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.29.

History: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31.212; 1993 a. 274,451; 1995 a. 259; 1997 a. 35,191,252; 1999 a. 9; 2001 a. 109.

Under s. 940.27 (2) [now 948.22 (2], the state must prove that the defendant had an obligation to provide support and failed to do so for 120 days: the state need not prove that the defendant was required to pay a specific amount. Sub. (6) does not unconstitutionally shift the burden of proof. State v. Duprey, 149 Wis. 2d 655,439 N.W.2d 837 (Ct. App. 1989).

Multiple prosecutions for a continuous failure to pay child support are allowed. State v. Grayson, 172 Wis. 2d 156,493 N.W.2d 23 (1992).

Jurisdiction in a criminal nonsupport action under s. 948.22 does not require that the child to be supported be a resident of Wisconsin during the charged period. State v. Gantt, 201 Wis. 2d 206,548 N.W.2d 134 (Ct. App. 1996).

Evidence of incarceration to prove inability to pay is not excluded under sub. (6), and there was no basis to find the evidence irrelevant. State v. Stutesman, 221 Wis. 2d 178,585 N.W.2d 181 (Ct. App. 1998).

This section does not distinguish between support and arrearages. It criminalizes failure to pay arrearages even after the child for whom support is ordered attains majority, Incarceration for violation of this section is not unconstitutional imprisonment for a debt, State v. Lenz. 230 Wis. 2d 529.602 N.W.2d 172 (Ct. App. 1999).

If nonsupport is charged as a continuing offense, the statute of limitations runs from the last date the defendant intentionally fails *to* provide support. If charges are brought for each I20 day period that a person does not pay, the statute of limitations bars charging for those 120 periods that are more than 6 years old. The running of the statute of limitations does not prevent inclusion of all unpaid amounts in a later arrearage order. State v. Monarch, 230 Wis. 2d 542,602 N.W.2d 179 (Ct. App. 1999).

A father, who intentionally refused to pay child support could, as a condition of probation, be required to avoid having another child unless he showed that he could support that child and his current children. In light of the the defendant's ongoing victimization of his children and record manifesting his disregard for the law, the condition was not overly broad and was reasonably related to the defendant's rehabilitation. State v. Oakley, 2001 WI 103, 245 Wis. 2d 447,629 N.W.2d 200.

948.23 Concealing death of child. Any person who conceals the corpse of any issue of a woman's body with intent to prevent a determination of whether it was born dead or alive is guilty of a Class I felony.

NOTE: This section is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

948.23 Concealing death of child. Any person who conceals the corpse of any issue of a woman's body with intent to present a determination of whether it was born dead or alive is guilty of a Class E felony.

History: 1977 c. 173; 1987 a. 332 s. 47: Stats. 1987 s. 948.23; 2001 a. 109.

948.24 Unauthorized placement for adoption. (1) Whoever does any of the following is guilty of a Class H felony:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior *to* 2–1–03 it reads:

(1) Whoever does any of the following is guilty of a Class D felony:

(a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

(b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except under s. 48.833.

(c) In order to receive a child for adoption, gives anything exceeding the actual cost of the legal and other services rendered in connection with the adoption and the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

(2) This section does not apply to placements under s. 48.839.

History: 1981 c. 81; 1987 a. 332 s. 50; Stats. 1987 s. 948.24; 1989 a. 161; 1997 a. 104; 2001 a. 109.

948.30 Abduction of another's child; constructive custody. (1) Any person who, for any unlawful purpose, does any of the following is guilty of a Class E felony:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Any person who, for any unlawful purpose, does any of the following is guilty of a Class C felony:

(a) Takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) Detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(2) Any person who, for any unlawful purpose, does any of the following is guilty of a Class C felony:

NOTE: Sub. (2) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to **2–1–03 it reads:**

(2) Any person who, for any unlawful purpose, does any of the following is guilty of a Class B felony:

(a) By forcc or threat of imminent forcc, takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) By force or threat of imminent force, detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(3) For purposes of subs. (1) (a) and *(2)* (a), a child is in the custody of his or her parent, guardian or legal custodian if:

(a) The child is in the actual physical custody of the parent, guardian or legal custodian; or

(b) The child is not in the actual physical custody of his or her parent, guardian or legal custodian, but the parent, guardian or legal custodian continues to have control of the child.

History: 1987 a. 332; 2001 a. 109.

948.31 Interference with custody by parent or others.

(1) (a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, child custody, paternity, guardianship or habeas corpus.

2. The dcpartmcnt of health and family services or the department of corrections or any person, county department under s. 46.215, 46.22 or 46.23 or licensed child welfare agency, if custody or supervision of the child has been transferred under ch. 48 or 938 to that department, person or agency.

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court–approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class F felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

NOTE: Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court–approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class C felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.60, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class I felony. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

NOTE: Sub. (2) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.60, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class E felony. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class F felony:

NOTE: Sub. (3) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class C felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining child custody rights, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in s. 822.02 (9).

(c) After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in violation of the order or withholds a child for more than 12 hours beyond the court–approved period of physical placement or visitation period.

(4) (a) It is an affirmative defense to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parent to protect his or her child in a situation in which the parent or authorized person reasonably believes that there is a threat of physical harm or sexual assault to the child;

2. Is taken by a parent fleeing in a situation in which the parent reasonably believes that there is a threat of physical harm or sexual assault to himself or herself;

3. Is consented to by the other parent or any other person or agency having legal custody of the child; or

4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in s. 971.19 (8).

(6) In addition to any otber penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under s. 973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity in locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

History: 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ss. 7237.9126 (19); 1995 a. 77; 1997 a. 290; 2001 a. 109.

"Imminent physical harm" under sub. (4) is discussed. State v. McCoy, 143 Wis. 2d 274.421 N.W.2d 107 (1988).

When a mother had agreed to the father's taking their child on a camping trip, but the father actually intended to permanently take, and did abscond to Canada with, the child, the child was taken based on the mother's "mistake of fact," which under s. 939.22 (48) rendered the taking of the child "without consent." State v. Inglin, 224 Wis. 2d 764,592 N.W.2d 666 (Ct. App. 1999).

In sub. (2), "takes away" a child refers to the defendant removing the child from the parents' possession. which suggests physical manipulation or physical removal. "Causes to leave" in sub. (2) means being responsible for a child abandoning, departing, or leaving the parents, which suggest some sort of mental, rather than physical, manipulation. State v. Samuel, 2001 WI App 25,240 Wis. 2d 756,623 N.W.2d 565. Reversed on other grounds, 2002 WI 34.

948.35 Solicitation of a child to commit a felony.

(1) (a) Except as provided in pars. (b) to (d) or s. 961.455, any person who has attained the age of 17 years and who, with the intent that a felony be committed and under circumstances that indicate unequivocally that he or she has the intent, knowingly solicits, advises, hires, directs or counsels a person 17 years of age or under to commit that felony may be fined or imprisoned or both, not to exceed the maximum penalty for the felony.

(b) For a solicitation to commit a Class A felony under the circumstances described under par. (a), the person may be imprisoned not to exceed the maximum period of imprisonment for a Class B felony.

(c) For a solicitation to commit a Class B felony under the circumstances described under par. **(a),** the person may be fined or imprisoned or both, not to exceed the maximum penalties for a Class C felony.

(d) For a solicitation to commit a Class C felony under the circumstances described under par. (a), the person may be fined or imprisoned or both, not to exceed the maximum penalties for a Class D felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. A defendant does not have a defense to a prosecution under this section because he or she mistakenly believed that the person who was solicited, advised, hired, directed or counseled had attained the age of 18 years, even if the mistaken belief was reasonable.

NOTE: This section is repealed eff. 2–1–03 by **2001 Wis. Act 109.**

History: 1991 a. 153; 1995 a. 27,448; 2001 a. 109.

948.36 Use of child to commit a Class A felony. (1) Any person who has attained the age of 17 years and who, with the intent that a Class A felony be committed and under circumstances that indicate unequivocally that he or she has that intent, knowingly solicits, advises, hires, directs, counsels, employs, uses or otherwise procures a person 17 years of age or under *to* commit that Class A felony may, if the Class A felony is committed by the child, be imprisoned for not more than 5 years in excess of the maximum period of imprisonment provided by law for that Class **A** felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. A defendant does not have a defense to a prosecution under this section because he or she mistakenly believed that the person who was advised, hired, directed, counseled, employed, used or procured had attained the age of 18 years, even if the mistaken belief was reasonable.

NOTE: This section is repealed eff. 2–1–03 by 2001 Wis. Act 109.
History: 1991 a. 153; 1995 **a.** 27; 2001 **a.** 109.

948.40 Contributing to the delinquency of a child. (1) No person may intentionally encourage or contribute to the delinquency of a child. This subsection includes intentionally encouraging or contributing to an act by a child under the age of 10 which would be a delinquent act if committed by a child 10 years of age or older.

(2) No person responsible for the child's welfare may, by disregard of the welfare of the child, contribute to the delinquency of the child. This subsection includes disregard that contributes to an act by a child under the age of 10 that would be a delinquent act if committed by a child 10 years of age or older.

(3) Under this section, a person encourages or contributes to the delinquency of a child although the child does not actually become delinquent if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become delinquent.

(4) A person who violates this section is guilty of a Class **A** misdemeanor, except:

(a) If death is a consequence, the person is guilty of a Class D felony; or

NOTE Par. (a) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(a) If death is a consequence, the person is guilty of a Class C felony; or

(b) If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class H felony.

NOTE: Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class D felony.

History: 1987 a. 332; 1989 a. 31; 1995 a. 77; 2001 a. 109.

948.45 Contributing to truancy. (1) Except as provided in sub. (2), any person 17 years of age or older who, by any act or omission, knowingly encourages or contributes to the truancy, as defined under s. 118.16 (1) (c), of a person 17 years of age or under is guilty of a Class C misdemeanor.

(2) Subsection (1) does not apply to a person who has under his or her control a child who has been sanctioned under s. 49.26 (1) (h).

(3) An act or omission contributes to the truancy of a child, whether or not the child is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the child to be truant.

History: 1987 a. 285; 1989 **a.** 31 s. 2835m; Stats. 1989 **s.** 948.45; 1995 a. 27.

948.50 Strip search by school employee. (1) The legislature intends, by enacting this section, to protect pupils from being strip searched. By limiting the coverage of this section, the legislature is not condoning the use of strip searches under other circumstances.

(2) In this section:

(a) "School" means a public, parochial or private school which provides an educational program for one or more grades between kindergarten and grade 12 and which is commonly known as a kindergarten, elementary school, middle school, junior high school, senior high school or high school.

(b) "Strip search" means a search in which a person's genitals, pubic area, buttock or anus, or a female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

(3) Any official, employee or agent of any school or school district who conducts a strip search of any pupil is guilty of a Class B misdemeanor.

(4) This section does not apply to a search of any person who:

(a) Is serving a sentence, pursuant to a conviction, in a jail, state prison or house of correction.

(b) Is placed in or transferred to a secured correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g).

(c) Is Committed, transferred or admitted under ch. 51, 971 or 975.

(5) This section does not apply to any law enforcement officer conducting a strip search under s. 968.255.

History: 1983 **a. 489;** 1987 a. 332 **s.** 38; Stats. 1987 s. 948.50; 1995 a. 77.

948.51 Hazing. (1) In this section "forced activity" means any activity which is a condition of initiation or admission into or affiliation with an organization, regardless of a student's willingness to participate in the activity.

(2) No person may intentionally or recklessly engage in acts which endanger the physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating in connection with a school, college or university. Under those circumstances, prohibited acts may include any brutality of a physical nature, such as whipping, beating, branding, forced consumption of any food, liquor, drug or other substance, forced confinement or any other forced activity which endangers the physical health or safety of the student.

(3) Whoever violates sub. (2) is guilty of:

(a) A Class A misdemeanor if the act results in or is likely to result in bodily harm to another.

(b) A Class H felony if the act results in great bodily harm to another.

NOTE: Par. (h) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) A Class E felony if the act results in great bodily harm or death to another.

(c) A Class G felony if the act results in the death of another.

NOTE: Par. (c) is created eff. 2–1–03 by 2001 Wis. Act 109.
History: 1983 **a.** 356; 1987 **a.** 332 **s.** 32; Stats. 1987 s. 948.51; 2001 a. 109.

948.55 Leaving or storing a loaded firearm within the reach or easy access of a child. (1) In this section, "child" means a person who has not attained the age of 14 years.

(2) Whoever recklessly stores or leaves a loaded fireann within the reach or easy access of a child is guilty of a Class **A** misdemeanor if all of the following occur:

(a) A child obtains the firearm without the lawfbl permission of his or her parent or guardian or the person having charge of the child.

(b) The child under par. (a) discharges the firearm and the discharge causes bodily harm or death to himself, herself or another.

(3) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class C misdemeanor if all of the following occur:

(a) **A** child obtains the firearm without the lawfbl permission of his or her parent or guardian or the person having charge of the child.

(b) The child under par. (a) possesses or exhibits the firearm in a public place or in violation of s. 941.20.

(4) Subsections (2) and (3) do not apply under any of the following circumstances:

(a) The fireann is stored or left in a securely locked box or container or in a location that a reasonable person would believe to be secure.

(b) The firearm is securely locked with a trigger lock.

(c) The firearm is left on the person's body or in such proximity to the person's body that he or she could retrieve it as easily and quickly as if carried on his or her body.

(d) The person is a peace officer or a member of the armed forces or national guard and the child obtains the firearm during or incidental to the performance of the person's duties.

(e) The child obtains the fireann as a result of an illegal entry by any person.

(f) The child gains access to a loaded firearm and uses it in the lawful exercise of a privilege under **s.** 939.48.

(g) The person who stores or leaves a loaded fireann reasonably believes that a child is not likely to be present where the firearm is stored or left.

(h) The firearm is rendered inoperable by the removal of an essential component of the firing mechanism such as the bolt in a breech–loading firearm.

(5) Subsection (2) does not apply if the bodily harm or death resulted from an accident that occurs while the child is using the firearm in accordance with **s.** 29.304 or 948.60 (3).

History: 1991 a. **139;** 1997 a. 248.

948.60 Possession of a dangerous weapon by a person under 18. (1) In this section, "dangerous weapon" means any firearm, loaded or unloaded; any electric weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather; a cestus or similar material weighted with metal or other substance and worn on the hand; a shuriken or any similar pointed star–like object intended to injure a person when thrown; or a manrikigusari or similar length of chain having weighted ends.

(2) (a) Any person under 18 years of age who possesses or goes armed with a dangerous weapon is guilty of a Class A misdemeanor.

(b) Except as provided in par. (c), any person who intentionally sells, loans or gives a dangerous weapon to a person under 18 years of age is guilty of a Class **I** felony.

NOTE: Par. (h) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) Except as provided in par. (c), any person who intentionally sells, loans or gives a dangerous weapon *to* a person under 18 years of age is guilty of a Class E felony.

(c) Whoever violates par. (b) is guilty of a Class H felony if the person under 18 years of age under par. (b) discharges the firearm and the discharge causes death to himself, herself or another.

NOTE: Par. (c) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(c) Whoever violates par. (b) is guilty of a Class D felony if the person under 18 years of age under par. (b) discharges the firearm and the discharge causes death to himself, herself or another.

(d) A person under 17 years of age who has violated this subsection is subject to the provisions of ch. 938 unless jurisdiction is waived under s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

(3) (a) This section does not apply to a person under 18 years of age who possesses or is armed with a dangerous weapon when the dangerous weapon is being used in target practice under the supervision of an adult or in a course of instruction in the traditional and proper use of the dangerous weapon under the supervision of an adult. This section does not apply to an adult who transfers a dangerous weapon to a person under 18 years of age for use only in target practice under the adult's supervision or in a course of instruction in the traditional and proper use of the dangerous weapon under the adult's supervision.

(b) This section does not apply to a person under 18 years of age who is a member of the armed forces or national guard and who possesses or is armed with a dangerous weapon in the line of duty. This section does not apply to an adult who is a member of the armed forces or national guard and who transfers a dangerous weapon to a person under 18 years of age in the line of duty.

(c) This section does not apply to a person under 18 years of age who possesses or is armed with a firearm having a barrel 12 inches in length or longer and who is in compliance with ss. 29.304 and 29.593. This section does not apply to an adult who transfers a firearm having a barrel 12 inches in length or longer to a person under 18 years of age who is in Compliance with **ss.** 29.304 and 29.593.

History: 1987 **a.** 332; 1991 a. 18, 139; 1993 a. 98; 1995 a. 27, 77; 1997 a. 248; 2001 a. 109.

Sub. (2) (b) does not set a standard for civil liability, and violation of sub. (2) (b) does *not constitute negligence per se.* Logarto v. Gustafson, 998 F. **Supp.** 998 (1998).

948.605 Gun–free school zones. (1) DEFINITIONS. In this section:

(a) "Encased" has the meaning given in **s.** 167.31 (1) (b).

(ac) "Fireann" does not include any beebee or pellet–firing gun that expels a projectile through the force of air pressure or any starter pistol.

(am) "Motor vehicle" has the meaning given in **s.** 340.01 (35).

(b) "School" has the meaning given in **s.** 948.61 (1) (b).

(c) "School zone" means any of the following:

1. In or on the grounds of a school.

2. Within 1,000 feet from the grounds of a school.

(2) POSSESSION OF FIREARM IN SCHOOL ZONE. (a) Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone is guilty of a Class 1 felony.

NOTE: Par. (a) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(a) Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone is guilty of a Class A misdemeanor.

(b) Paragraph (a) does not apply to the possession of a firearm:

1. On private property not part of school grounds:

2. If the individual possessing the firearm is licensed to do so by a political subdivision of the state or bureau of alcohol, tobacco and firearms in which political subdivision the school zone is located, and the law of the political subdivision requires that, before an individual may obtain such a license, the law enforcement authorities of the political subdivision must verify that the individual is qualified under law to receive the license;

3. That is not loaded and is:

a. Encased; or

b. In a locked firearms rack that is on a motor vehicle;

4. By an individual for use in a program approved by a school in the school zone;

5. By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

6. By a law enforcement officer acting in his or her official capacity; or

7. That is unloaded and is possessed by an individual while traversing school grounds for the purpose of gaining access to public or private lands open to hunting, if the entry on school grounds is authorized by school authorities.

(3) DISCHARGE OF FIREARM IN A SCHOOL ZONE. (a) Any individual who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place the individual knows is a school zone is guilty of a Class G felony.

NOTE: Par. (a) is shown as amended eff. 2–1–03 hy 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(a) Any individual who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place the individual knows is a school zone is guilty of a Class D felony.

(b) Paragraph (a) does not apply to the discharge of, or the attempt to discharge, a firearm:

1. On private property not part of school grounds;

2. As part of a program approved by a school in the school zone, by an individual who is participating in the program;

3. By an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

4. By a law enforcement officer acting in his or her official capacity.

(4) CONSECUTIVE SENTENCE. Notwithstanding s. 973.15 (2) to (4), if a court imposes a term of imprisonment under this section, the court shall impose the sentence consecutive to any other sentence.

NOTE: Sub. (4) is repealed eff. 2–1–03 by 2001 Wis. Act 109.

History: 1991 a. 17; 1993 a. 336; 2001 **a.** 109.

948.61 Dangerous weapons other than firearms on school premises. (1)

In this section:

(a) "Dangerous weapon" has the meaning specified in s. 939.22 (10), except "dangerous weapon" does not include any firearm and does include any beebee or pellet–firing gun that expels a projectile through the force of air pressure or any starter pistol.

(b) "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(c) "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.

(2) Any person who knowingly possesses or goes armed with a dangerous weapon on school premises is guilty of:

(a) A Class A misdemeanor.

(b) A Class I felony, if the violation is the person's 2nd or subsequent violation of this section within a 5–year period, as measured from the dates the violations occurred.

NOTE Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(h) A Class E felony, if the violation is the person's 2nd or subsequent violation of this section within a 5–year period, as measured from the dates the violations occurred.

(3) This section does not apply to any person who:

(a) Uses a weapon solely for school-sanctioned purposes.

(b) Engages in military activities, sponsored by the federal or state government, when acting in the discharge of his or her official duties.

(c) Is a law enforcement officer acting in the discharge of his or her official duties.

(d) Participates in a convocation authorized by school authorities in which weapons of collectors or instructors are handled or displayed.

(e) Drives a motor vehicle in which a dangerous weapon is located onto school premises for school–sanctioned purposes or for the purpose of delivering or picking up passengers or property. The weapon may not be removed from the vehicle or be used in any manner.

(4) A person under 17 years of age who has violated this section is subject to the provisions of ch. 938, unless jurisdiction is waived under s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

History: 1987 a. 332; 1991 a. 17; 1993 a. 336; 1995 a. 27, 77; 2001 a. 109.

Pellet guns and BB guns **are dangerous weapons** under **this section. Interest of Michelle A.D.** 181 Wis. 2d 917, 512 N.W.2d 248 **(Ct. App.** 1994).

948.62 Receiving stolen property from a child. (1)

Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:

(a) A Class A misdemeanor, if the value of the property does not exceed $500.

(b) A Class I felony, if the value of the property exceeds $500 but does not exceed $2,500.

(bm) A Class H felony, if the value of the property exceeds $2,500 but does not exceed $5,000.

(c) A Class G felony, if the value of the property exceeds $5,000.

NOTE: Sub. (1) is shown as affected eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:

(a) A Class E felony, if the value of the property does not exceed $500.

(b) A Class D felony, if the value of the property exceeds $500 hut does not exceed $2,100.

(c) A Class C felony, if the value of the property exceeds $2,500.

(2) Under this section, proof of all of the following is prima facie evidence that property received from a child was stolen and that the person receiving the property knew it was stolen:

(a) That the value of the property received from the child exceeds $500.

(b) That there was no consent by a person responsible for the child's welfare to the delivery of the property to the person.

History: 1987 **a.** 333; 2001 **a.** 109.

948.63 Receiving property from a child.

Whoever does either of the following is guilty of a Class A misdemeanor:

(1) As a dealer in secondhand articles or jewelry or junk, purchases any personal property, except old rags and waste paper, from any child, without the written consent of his or her parent or guardian; or

(2) As a pawnbroker or other person who loans money and takes personal property as security therefor, receives personal property as security for a loan from any child without the written consent of his or her parent or guardian.

History: 1971 **c.** 228; 1977 **c.** 173; 1987 **a.** 332 s. **40;** Stats. 1987 **s.** 948.63; 1989 **a.** 257.

948.70 Tattooing of children. (1)

In this section:

(a) "Physician" has the meaning given in s. 448.01 (5).

(b) "Tattoo" means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.

(2) Subject to sub. (3), any person who tattoos or offers to tattoo a child is subject to a Class D forfeiture.

(3) Subsection (2) does not prohibit a physician from tattooing or offering to tattoo a child in the course of his or her professional practice.

History: 1991 **a.** 106.

CHAPTER 971
CRIMINAL PROCEDURE — PROCEEDINGS BEFORE AND AT TRIAL

971.14 Competency proceedings. (1) PROCEEDINGS. (a) The court shall proceed under this section whenever there is reason to doubt a defendant's competency to proceed.

(b) If reason to doubt competency arises after the defendant has been bound over for trial after a preliminary examination, or after a finding of guilty has been rendered by the jury or made by the court, a probable cause determination shall not be required and the court shall proceed under sub.(2).

(c) Except as provided in par.(b), the court shall not proceed under sub.(2) until it has found that it is probable that the defendant committed the offense charged. The finding may be based upon the complaint or, if the defendant submits an affidavit alleging with particularity that the averments of the complaint are materially false, upon the complaint and the evidence presented at a hearing ordered by the court. The defendant may call and cross–examine witnesses at a hearing under this paragraph but the court shall limit the issues and witnesses to those required for determining probable cause. Upon a showing by the proponent of good cause under **s.** 807.13 (2) (c), testimony may be received into the record of the hearing by telephone or live audiovisual means. If the court finds that any charge lacks probable cause, it shall dismiss the charge without prejudice and release the defendant except as provided in s. 971.31 (6).

(2) EXAMINATION. (a) The court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant. If an inpatient examination **is** determined by the court to be necessary, the defendant may be committed to a suitable mental health facility for the examination period specified in par.(c), which shall be deemed days spent in custody under **s.** 973.155. If the examination is to be conducted by the department of health and family services, the court shall order the individual to the facility designated by the department of health and family services.

(am) Notwithstanding par.(a), if the court orders the defendant to be examined by the department or a department facility, the department shall determine where the examination will be conducted, who will conduct the examination and whether the examination will be conducted on an inpatient or outpatient basis. Any such outpatient examination shall be conducted in a jail or a locked unit of a facility. In any case under this paragraph in which the department determines that an inpatient examination is necessary, the 15–day period under par.(c) begins upon the arrival of the defendant at the inpatient facility. If an outpatient examination is begun by or through the department, and the department later determines that an inpatient examination is necessary, the sheriff shall transport the defendant to the inpatient facility designated by the department, unless the defendant has been released on bail.

(b) If the defendant has been released on bail, the court may not order an involuntary inpatient examination unless the defendant fails to cooperate in the examination or the examiner informs the court that inpatient observation is necessary for an adequate examination.

(c) Inpatient examinations shall be completed and the report of examination filed within 15 days after the examination is ordered or as specified in par.(am), whichever is applicable, unless, for good cause, the facility or examiner appointed by the court cannot complete the examination within this period and requests an extension. In that case, the court may allow one 15–day extension of the examination period. Outpatient examinations shall be completed and the report of examination filed within 30 days after the examination is ordered.

(d) If the court orders that the examination be conducted on an inpatient basis, the sheriff of the county in which the court is located shall transport any defendant not free on bail to the examining facility within a reasonable time after the examination is ordered and shall transport the defendant to the jail within a reasonable time after the sheriff and county department of community programs of the county in which the court is located receive notice from the examining facility that the examination has been completed.

(e) The examiner shall personally observe and examine the defendant and shall have access to his or her past or present treatment records, as defined under s. **51**.30 (1) (b).

(f) **A** defendant ordered to undergo examination under this section may receive voluntary treatment appropriate to his or her medical needs. The defendant may refuse medication and treatment except in a situation where the medication or treatment is necessary to prevent physical harm to the defendant or others.

(g) The defendant may be examined for competency purposes at any stage of the competency proceedings by physicians or other experts chosen by the defendant or by the district attorney, who shall be permitted reasonable access to the defendant for purposes of the examination.

(3) REPORT. The examiner shall submit to the court a written report which shall include all of the following: (a) **A** description of the nature of the examination and an identification of the persons interviewed, the specific records reviewed and any tests administered to the defendant.

(b) The clinical findings of the examiner.

(c) The examiner's opinion regarding the defendant's present mental capacity to understand the proceedings and assist in his or her defense.

(d) If the examiner reports that the defendant lacks competency, the examiner's opinion regarding the likelihood that the defendant, if provided treatment, may he restored to competency within the time period permitted under sub.(5) (a).

(dm) If sufficient information is available to the examiner to reach an opinion, the examiner's opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment. The defendant is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the defendant, one of the following is true:

1. The defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

2. The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(e) The facts and reasoning, in reasonable detail, upon which the findings and opinions under pars.(b) to (dm) are based.

(4) HEARING. (a) The court shall cause copies of the report to be delivered forthwith to the district attorney and the defense counsel, or the defendant personally if not represented by counsel. The report shall not be otherwise disclosed prior to the hearing under this subsection.

(b) If the district attorney, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall promptly determine the defendant's competency and, if at issue, competency to refuse medication or treatment for the defendant's mental condition on the basis of the report filed under sub.(3) or (5). In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. Upon a showing by the proponent of good cause under **s.** 807.13 (2) (c), testimony may be received into the record of the hearing by telephone or live audiovisual means. **At** the commencement of the hearing, the judge shall ask the defendant whether he or she claims to be competent or incompetent. If the defendant stands mute or claims to be incompetent, the defendant shall be found incompetent unless the state proves by the greater weight of the credible evidence that the defendant is competent. If the defendant claims to be competent, the defendant shall be found competent

unless the state proves by evidence that is clear and convincing that the defendant is incompetent. If the defendant is found incompetent and if the state proves by evidence that is clear and convincing that the defendant is not competent to refuse medication or treatment, under the standard specified in sub.(3) (dm), the court shall make a determination without a jury and issue an order that the defendant is not competent to refuse medication or treatment for the defendant's mental condition and that whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.

(c) If the court determines that the defendant is competent, the criminal proceeding shall be resumed.

(d) If the court determines that the defendant is not competent and not likely to become competent within the time period provided in sub.(5) (a), the proceedings shall be suspended and the defendant released, except as provided in sub.(6) (b).

(5) COMMITMENT. (a) If the court determines that the defendant is not competent but is likely to become competent within the period specified in this paragraph if provided with appropriate treatment, the court shall suspend the proceedings and commit the defendant to the custody of the department of health and family services for placement in an appropriate institution for a period of time not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. Days spent in commitment under this paragraph are considered days spent in custody under s. 973.155.

(am) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendant's mental condition and if the treatment facility determines that the defendant should be subject to such a court order, the treatment facility may file with the court with notice to the counsel for the defendant, the defendant and the district attorney, a motion for a hearing, under the standard specified in sub.(3) (dm), on whether the defendant is not competent to refuse medication or treatment. **A** report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall, under the procedures and standards specified in sub.(4) (b), determine the defendant's competency to refuse medication or treatment for the defendant's mental condition. At the request of the defendant, the defendant's counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph.

(b) The defendant shall be periodically reexamined by the treatment facility. Written reports of examination shall be furnished to the court 3 months after commitment, 6 months after commitment, 9 months after commitment and within 30 days prior to the expiration of commitment. Each report shall indicate either that the defendant has become competent, that the defendant remains incompetent but that attainment of competency is likely within the remaining commitment period, or that the defendant has not made such progress that attainment of competency is likely within the remaining commitment period. Any report indicating such a lack of sufficient progress shall include the examiner's opinion regarding whether the defendant is mentally ill, alcoholic, drug dependent, developmentally disabled or infirm because of aging or other like incapacities.

(c) Upon receiving a report under par.(b), the court shall proceed under sub.(4). If the court determines that the defendant has become competent, the defendant shall be discharged from commitment and the criminal proceeding shall be resumed. If the court determines that the defendant is making sufficient progress toward becoming competent, the commitment shall continue.

(d) If the defendant is receiving medication the court may make appropriate orders for the continued administration of the medication in order to maintain the competence of the defendant for the duration of the proceedings. If a defendant who has been restored to competency thereafter again becomes incompetent, the maximum commitment period under par.(a) shall be 18 months minus the days spent in previous commitments under this subsection, or 12 months, whichever is less.

(6) DISCHARGE; **CIVIL PROCEEDINGS.** (a) If the court determines that it is unlikely that the defendant will become competent within the remaining commitment period, it shall discharge the defendant from the commitment and release him or her, except as provided in par.@). The court may order the defendant to appear in court at specified intervals for re-determination of his or her competency to proceed.

(b) When the court discharges a defendant from commitment under par.(a), it may order that the defendant be taken immediately into custody by a law enforcement official and promptly delivered to a facility specified in s. 51.15 (2), an approved public treatment facility under s. 51.45 (2) (c) or an appropriate medical or protective placement facility. Thereafter, detention of the defendant shall be governed by s. 51.15, 51.45 (11) or 55.06 (11), as appropriate. The district attorney or corporation counsel may prepare a statement meeting the requirements of s. 51.15 (4) or (5), 51.45 (13) (a) or 55.06 (11) based on the allegations of the criminal complaint and the evidence in the case. This statement shall be given to the director of the facility to which the defendant is delivered and filed with the branch of circuit court assigned to exercise criminal jurisdiction in the county in which the criminal charges are pending where it shall suffice, without corroboration by other petitioners, as a petition for commitment under s. 51.20, 51.45 (13) or 55.06 (2). This section does not restrict the power of the branch of circuit court in which the petition is filed to transfer the matter to the branch of circuit court assigned to exercise jurisdiction under ch. 51 in the county. Days spent in commitment or protective placement pursuant to a petition under this paragraph shall not be deemed days spent in custody under s. 973.155.

(c) If a person is committed under s. 51.20 pursuant to a petition under par.(b), the county department under s. 51.42 or 51.437 to whose care and custody the person is committed shall notify the court which discharged the person under par.(a), the district attorney for the county in which that court is located and the person's attorney of record in the prior criminal proceeding at least 14 days prior to transferring or discharging the defendant from an inpatient treatment facility and at least 14 days prior to the expiration of the order of commitment or any subsequent consecutive order, unless the county department or the department of health and family services has applied for an extension.

(d) Counsel who have received notice under par.(c) or who otherwise obtain information that a defendant discharged under par.(a) may have become competent may move the court to order that the defendant undergo a competency examination under sub.(2). If the court so orders, a report shall be filed under sub.(3) and a hearing held under sub.(4). If the court determines that the defendant is competent, the criminal proceeding shall be resumed. If the court determines that the defendant is not competent, it shall release him or her but may impose such reasonable nonmonetary conditions as will protect the public and enable the court and district attorney to discover whether the person subsequently becomes competent.

History: 1981 c. 367; 1985 a. 29, 176; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 85,403; 1989 a. 31, 107; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 32; 1995 a. 27 s. 9126 **(19);** 1995 a. 268; 1997 a. 252; 2001 a. 16.

Judicial Council Committee's Note, **1981:**

Sub.(1) (a) does not require the court to honor every request for an examination. The intent of sub.(1) (a) is to avoid unnecessary examinations by clarifying the threshold for a competency inquiry in accordance with State v. McKnight, 65 Wis. 2d 583 (1974).

"Reason to doubt" may be raised by a motion setting forth the grounds for belief that a defendant lacks competency, by the evidence presented in the proceedings or by the defendant's colloquies with the judge or courtroom demeanor. In some cases an evideotiary hearing may be appropriate to assist the court in deciding whether to order an examination under sub.(2). Even when neither party moves the court to order a competency inquiry, the court may be required by due process to so inquire where the evidence raises a sufficient doubt. Pate v. Robinson, 383 U.S. 375, 387 (1966); Drope v. Missouri, 420 U.S. 162 (1975).

The Wisconsin supreme court has held that a defendant may not be ordered to undergo a competency inquiry unless the court has found probable cause to believe he or she is guilty of the offense charged. State v. McCredden, 33 Wis. 2d 661 (1967).

Where this requirement has not been satisfied through a preliminary examination **or** verdict or finding of guilt prior to the time the competency issue **is** raised, a special probable cause determination is required. Subsection (1) (b) allows that determination to be made from the allegations in the criminal complaint without an evidentiary hearing unless the defendant submits a particularized affidavit alleging that averments in the criminal complaint are materially false. Where a hearing is held, the issue is limited to probable cause and hearsay evidence may be admitted. See s. 911.01 (4) (c). Sub.(2) (a) requires the court to appoint one or more qualified examiners to examine the defendant when there is reason to doubt his or her competency. Although the prior statute required the appointment of a physician, this section allows the court to appoint examiners without medical degrees, if their particular qualifications enable them to form expert opinions regarding the defendant's competency. Sub.(2) (b), (c)

and (d) is intended to limit the defendant's stay at the examining facility to that period necessary for examination purposes. In many cases, it is possible for an adequate examination to be made without institutional commitment, expediting the commencement of treatment of the incompetent defendant. Fosdal, The Contributions and Limitations of Psychiatric Testimony, 50 Wis. Bar Bulletin, No. 4, pp. 31–33 (April 1977).

Sub.(2) (e) clarifies the examiner's right of access to the defendant's past or present treatment records, otherwise confidential under s. 51.30. Sub.(2) (f) clarifies that a defendant on examination status may receive voluntary treatment but, until committed under sub.(5), may not be involuntarily treated or medicated unless necessary for the safety of the defendant **or** others. **See s.** 51.61 (1) (f), (g), (h) and (i). Sub.(2) (g), like prior s. 971.14 (7), permits examination of the defendant by an expert of his or her choosing. It also allows access to the defendant by examiners selected by the prosecution at any stage of the competency proceedings. Sub.(3) requires the examiner to render an opinion regarding the probability of timely restoration to competency, to assist the court in determining whether an incompetent defendant should be committed for treatment. Incompetency commitments may not exceed the reasonable time necessary to determine whether there is a substantial probability that the defendant will attain competency in the foreseeable future: Jackson v. Indiana, 406 U.S. 715,738 (1972).

The new statute also requires the report to include the facts and reasoning which underlie the examiner's clinical findings and opinion on competency. Sub.(4) is based upon prior s. 971.14 (4).

The revision emphasizes that the determination of competency **is** a judicial matter. State ex rel. **Haskins** v. Dodge County Court, 62 Wis. 2d 250 (1974).

The standard of proof specified in State ex rel. Matalik v. Schubert, 57 Wis. 2d 315 (1973) has **been** changed to conform to the "clear and convincing evidence" standard of s. 51.20 (13) **(e)** and Addington v. Texas, 441 U.S. 418 (1979). [but see 1987 Wis. Act 85]

Sub.(5) requires, in accordance with Jackson v. Indiana, 406 U.S. 715 (1972), that competency commitments be justified by the defendant's continued progress toward becoming competent within a reasonable time. The maximum commitment period is established at 18 months, in accordance with State ex rel. Haskins v. Dodge County Court, 62 Wis. 2d 250 (1974) and other data.

If a defendant becomes competent while committed **for** treatment and later becomes incompetent, further commitment is permitted but in no event may the cumulated commitment periods exceed 24 months or the maximum sentence for the **offense** with which the defendant is charged, whichever is less. State ex rel. Deisinger v. Treffert, 85 Wis. 2d 257 (1978).

Sub.(6) clarifies the procedures for transition to civil commitment, alcoholism treatment or protective placement when the competency commitment has not been, or is not **likely** to be, successful in restoring the defendant to competency. The new statute requires the defense counsel, district attorney and criminal court to be notified when the defendant is discharged from civil commitment, in order that a redetermination of competency may be ordered at that stage. State ex rel. Porter v. Wolke, 80 Wis. 2d 197,297 N.W. 2d 881 (1977).

The procedures specified in sub.(6) are not intended to be the exclusive means of initiating civil commitment proceedings against such persons. **See,** e.g., In Matter of Haskins, 101 Wis. 2d 176 (Ct. App. 1980). [Bill 765–A]

Judicial Council Note, 1990: [Re amendment of (1) (c)]

The McCredden hearing is substantially similar in purpose to the preliminary examination. The standard for admission of telephone testimony should be the same in either proceeding. [Re amendment of (4) (b)] The standard for admission of telephone testimony at a competency hearing is the same as that **for** a preliminary examination. **Sees.** 970.03 (13) and NOTE thereto. **[Re** Order eff. 1–1–91]

The legislature intended by the reference to **s.** 973.155 in sub.(5) (a) that good time credit be accorded persons committed as incompetent to stand trial. State v. Moore, 167 Wis. 2d 491, 481 N.W.2d 633 (1992).

A competency hearing may be waived by defense counsel without affirmative assent of the defendant. State v. Guck, 176 Wis. 2d 845,500 N.W.2d 910 (1993).

The state bears the burden of proving competency when put at issue by the defendant. A defendant shall not be subject to a criminal trial when the state fails to prove competence by the greater weight of the credible evidence. A trial court's competency determination should be reversed **only** when clearly erroneous. State v. Garfoot, 207 Wis. 2d 215,558 N.W.2d 626 (1997).

See also State v. Byrge, 2000 WI 101,237 Wis. 2d 197,614 N.W.2d 477.

A probationer has a right to a competency determination when, during a revocation proceeding, the administrative law judge has reason to doubt the probationer's competence. The determination shall be made by the circuit court in the county of sentencing, which shall adhere to **ss.** 971.13 and 971.14 to the extent practicable. State ex rel. Vanderbeke v. Endicott, 210 N.W.2d 503,563 N.W.2d 883 (1997).

When a competency examination was ordered, but never occurred, the time limits under sub.(2) did not begin to run and no violation occurred. State ex rel. Hager v. Marten, 226 Wis. 2d 687,594 N.W.2d 791 (1999).

Wisconsin's new competency to stand trial statute. Fosdal and Fullin. WBB Oct. 1982. The insanity defense: Ready for reform? Fullin. WBB Dec. 1982.

971.17 Commitment of persons found not guilty by reason of mental disease or mental defect.

(1) COMMITMENT PERIOD. When a defendant is found not guilty by reason of mental disease or mental defect, the court shall commit the person to the department of health and family services for a specified period not exceeding two–thirds of the maximum term of imprisonment that could be imposed under s. 973.15 (2) (a) against an offender convicted of the same crime or crimes, including imprisonment authorized by **ss.** 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b) and 961.48 and other penalty enhancement statutes, as applicable, subject to the credit provisions of s. 973.155. If the maximum term of imprisonment is life, the commitment period specified by the court may be life, subject to termination under sub.(5).

(1g) If the defendant under sub.(1) is found not guilty of a felony by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.29.

(1h) NOTICE OF RESTRICTIONS ON POSSESSION OF BODY ARMOR. If the defendant under sub.(1) is found not guilty of a violent felony, as defined in s. 941.291 (1) (b), by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under **s.** 941.291.

(1j) SEXUAL ASSAULT; LIFETIME SUPERVISION. (a) In this subsection, "serious sex offense" has the meaning given in s. 939.615 (1) (b).

(b) If a person is found not guilty by reason of mental disease or defect of a serious sex offense, the court may, in addition to committing the person to the department of health and family services under sub.(1), place the person on lifetime supervision under **s.** 939.615 if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

(1m) SEXUAL ASSAULT; REGISTRATION AND TESTING. (a) If the defendant under sub.(1) is found not guilty by reason of mental disease or defect for a violation of **s.** 940.225 (1) or (2), 948.02 (1) or (2) or 948.025, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) 1m. Except as provided in subd. 2m., if the defendant under sub.(1) is found not guilty by reason of mental disease or defect for any violation, or for the solicitation, conspiracy or attempt to commit any violation, of ch. 940, 944 or 948 or **ss.** 943.01 to 943.15, the court may require the defendant to comply with the reporting requirements under **s.** 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in **s.** 980.01 (5), and that it would be in the interest of public protection to have the defendant report under s. 301.45. 2m. If the defendant under sub.(1) is found not guilty by reason of mental disease or defect for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the defendant was not the victim's parent, the court shall require the defendant to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the defendant, that the defendant is not required to comply under **s.** 301.45 (1m).

3. In determining under subd. 1m. whether it would be in the interest of public protection to have the defendant report under **s.** 301.45, the court may consider any of the following:

a. The ages, at the time of the violation, of the defendant and the victim of the violation.

b. The relationship between the defendant and the victim of the violation.

c. Whether the violation resulted in bodily harm, as defined in **s.** 939.22 (4), to the victim.

d. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

e. The probability that the defendant will commit other violations in the future.

g. Any other factor that the court determines may be relevant to the particular case.

4. If the court orders a defendant to comply with the reporting requirements under s. 301.45, the court may order the defendant to continue to comply with the reporting requirements until his or her death.

5. If the court orders a defendant to comply with the reporting requirements under **s.** 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding of not guilty by reason of mental disease or defect on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding has been reversed, set aside or vacated.

(2) INVESTIGATION AND EXAMINATION. (a) The court shall enter an initial commitment order under this section pursuant to a hearing held as soon as practicable after the judgment of not guilty by reason of mental disease or mental defect is entered. **If** the court lacks sufficient information to make the determination

required by sub. (3) immediately after trial, it may adjourn the hearing and order the department of health and family services to conduct a predisposition investigation using the procedure in s. 972.15 or a supplementary mental examination or both, to assist the court in framing the commitment order.

(b) If a supplementary mental examination is ordered under par.(a), the court may appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the person. In lieu thereof, the court may commit the person to an appropriate mental health facility for the period specified in par.(c), which shall count as days spent in custody under s. 973.155.

(c) An examiner shall complete an inpatient examination under par.(b) and file the report within 15 days after the examination is ordered unless, for good cause, the examiner cannot complete the examination and requests an extension. In that case, the court may allow one 15–day extension of the examination period. An examiner shall complete an outpatient examination and file the report of examination within 15 days after the examination is ordered.

(d) If the court orders an inpatient examination under par.(b), it shall arrange for the transportation of the person to the examining facility within a reasonable time after the examination is ordered and for the person to be returned to the jail or court within a reasonable time after the examination has been completed.

(e) The examiner appointed under par.(b) shall personally observe and examine the person. The examiner or facility shall have access to the person's past or present treatment records, as defined in **s.** 51.30 (1) (b), and patient health care records, as provided under **s.** 146.82 (2) (c). If the examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(f) The costs of an examination ordered under par.(a) shall be paid by the county upon the order of the court as part of the costs of the action.

(g) Within 10 days after the examiner's report is filed under par.(c), the court shall hold a hearing to determine whether commitment shall take the form of institutional care or conditional release.

(3) COMMITMENT ORDER. (a) An order for commitment under this section shall specify either institutional care or conditional release. The court shall order institutional care if it finds by clear and convincing evidence that conditional release of the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage. If the court does not make this finding, it shall order conditional release. In determining whether commitment shall be for institutional care or conditional release, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(b) If the state proves by clear and convincing evidence that the person is not competent to refuse medication or treatment for the person's mental condition, under the standard specified in s. 971.16 (3), the court shall issue, as part of the commitment order, an order that the person is not competent to refuse medication or treatment for the person's mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

(c) If the court order specifies institutional care, the department of health and family services shall place the person in an institution under s. 51.37 (3) that the department considers appropriate in light of the rehabilitative services required by the person and the protection of public safety. If the person is not subject to a court order determining the person to be not competent to refuse medication or treatment for the person's mental condition and if the institution in which the person is placed determines that the person should be subject to such a court order, the institution may file with the court, with notice to the person and his or her counsel and the district attorney, a motion for a hearing, under the standard specified in s. 971.16 (3), on whether the person is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the person needs medication or treatment and that the person is not competent to refuse medication or treatment, based on an examination of the person by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall determine the person's competency to refuse medication or treatment for the person's mental condition. At the request of the person, his or her counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph. If the district attorney, the person and his or her counsel waive their respective opportunities to present other evidence on the issue, the court shall determine the person's competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. If the state proves by evidence that is clear and convincing that the person is not competent to refuse medication or treatment, under the standard specified in **s.** 971.16 (3), the court shall order that the person is not competent to refuse medication or treatment for the person's mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

(d) If the court finds that the person is appropriate for conditional release, the court shall notify the department of health and family services. The department of health and family services and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health and family services may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health and family services and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department of health and family services may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the individual will be living in that county.

(e) An order for conditional release places the person in the custody and control of the department of health and family services. A conditionally released person is subject to the conditions set by the court and to the rules of the department of health and family services. Before a person is conditionally released by the court under this subsection, the court shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement under this paragraph does not apply if a municipal department or county sheriff submits to the court a written statement waiving the right to be notified. If the department of health and family services alleges that a released person has violated any condition or rule, or that the safety of the person or others requires that conditional release be revoked, he or she may be taken into custody under the rules of the department. The department of health and family services shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 48 hours after the detention. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department of health and family services may detain the person in a jail or in a hospital, center or facility specified by s. 51.15 (2). The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or

that the safety of the person or others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution under **s.** 51.37 (3) until the expiration of the commitment or until again conditionally released under this section.

(4) PETITION FOR CONDITIONAL RELEASE. (a) Any person who is committed for institutional care may petition the committing court to modify its order by authorizing conditional release if at least 6 months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this paragraph on the person's behalf at any time.

(b) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney and, subject to sub.(7) (b), refer the matter to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney.

(c) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in **s.** 51.30 (1) (b), and patient health care records, as provided under **s.** 146.82 (2) (c). If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(d) The court, without a jury, shall hear the petition within 30 days after the report of the court–appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under **s.** 51.20 (18). The court shall grant the petition unless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(e) If the court finds that the person is appropriate for conditional release, the court shall notify the department of health and family services. The department of health and family services and the county department under **s.** 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health and family services may contract with a county department, under **s.** 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health and family services and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department of health and family services may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the individual will be living in that county.

(4m) NOTICE ABOUT CONDITIONAL RELEASE. (a) In this subsection:

1. "Crime" has the meaning designated in s. 949.01 (1).

2. "Member of the family" means spouse, child, sibling, parent or legal guardian.

3. "Victim" means a person against whom a crime has been committed.

(b) If the court conditionally releases a defendant under this section, the district attorney shall do all of the following in accordance with par.(c):

1. Make a reasonable attempt to notify the victim of the crime committed by the defendant or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

2. Notify the department of corrections.

(c) The notice under par.(b) shall inform the department of corrections and the person under par.(b) 1. of the defendant's name and conditional release date. The district attorney shall send the notice, postmarked no later than 7 days after the court orders the conditional release under this section, to the department of corrections and to the last–known address of the person under par.(b) 1.

(d) Upon request, the department of health and family services shall assist district attorneys in obtaining information regarding persons specified in par.(b) 1.

(5) PETITION FOR TERMINATION. A person on conditional release, or the department of health and family services on his or her behalf, may petition the committing court to terminate the order of commitment. If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney and, subject to sub.(7) (b), refer the matter to the state public defender for determination of indigency and appointment of counsel under **s.** 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney. The petition shall be determined as promptly as practicable by the court without a jury. The court shall terminate the order of commitment unless it finds by clear and convincing evidence that further supervision is necessary to prevent a significant risk of bodily harm to the person or to others or of serious property damage. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and current mental condition, the person's behavior while on conditional release, and plans for the person's living arrangements, support, treatment and other required services after termination of the commitment order. **A** petition under this subsection may not be filed unless at least 6 months have elapsed since the person was last placed on conditional release or since the most recent petition under this subsection was denied.

(6) EXPIRATION OF COMMITMENT ORDER. (a) At least 60 days prior to the expiration of a commitment order under sub.(1), the department of health and family services shall notify all of the following:

1. The court that committed the person.

2. The district attorney of the county in which the commitment order was entered.

3. The appropriate county department under **s.** 51.42 or 51.437.

(b) Upon the expiration of a commitment order under sub.(1), the court shall discharge the person, subject to the right of the department of health and family services or the appropriate county department under **s.** 51.42 or 51.437 to proceed against the person under ch. 51 or 55. If none of those departments proceeds against the person under ch. 51 or 55, the court may order the proceeding.

(6m) NOTICE ABOUT TERMINATION OR DISCHARGE. (a) In this subsection:

1. "Crime" has the meaning designated in **s.** 949.01 (1).

2. "Member of the family" means spouse, child, sibling, parent or legal guardian.

3. "Victim" means a person against whom a crime has been committed.

(b) If the court orders that the defendant's commitment **is** terminated under sub.(5) or that the defendant be discharged under sub.(6), the department of health and family services shall do all of the following in accordance with par.(c):

1. If the person has submitted a card under par.(d) requesting notification, make a reasonable attempt to notify the victim of the crime committed by the defendant, or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

2. Notify the department of corrections.

(c) The notice under par.(b) shall inform the department of corrections and the person under par.(b) 1. of the defendant's

name and termination or discharge date. The department of health and family services shall send the notice, postmarked at least 7 days before the defendant's termination or discharge date, to the department of corrections and to the last–known address of the person under par.(b) 1.

(d) The department of health and family services shall design and prepare cards for persons specified in par.(b) 1. to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the applicable defendant and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in par.(b) 1. These persons may send completed cards to the department. All departmental records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1), except as needed to comply with a request under sub.(4m) (d) or s. 301.46 (3) (d).

(7) HEARINGS AND RIGHTS. (a) The committing court shall conduct all hearings under this section. The person shall be given reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(b) Without limitation by enumeration, at any hearing under this section, the person has the right to:

1. Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1).
2. Remain silent.
3. Present and cross-examine witnesses.
4. Have the hearing recorded by a court reporter.

(c) If the person wishes to be examined by a physician, as defined in s. 971.16 (1) (a), or a psychologist, as defined in s. 971.16 (1) (b), or other expert of his or her choice, the procedure under s. 971.16 (4) shall apply. Upon motion of an indigent person, the court shall appoint a qualified and available examiner for the person at public expense. Examiners for the person or the district attorney shall have reasonable access to the person for purposes of examination, and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (c).

(d) Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audiovisual means.

(8) APPLICABILITY. This section governs the commitment, release and discharge of persons adjudicated not guilty by reason of mental disease or mental defect for offenses committed on or after January 1, 1991. The commitment, release and discharge of persons adjudicated not guilty by reason of mental disease or mental defect for offenses committed prior to January 1, 1991, shall be governed by s. 971.17, 1987 stats., as affected bv 1989 Wisconsin Act 31.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order. 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334. 359; Sup. Ct. Order; 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98,227; 1995 a. 27 s. 9126 (19); 1995 a. 417,425,440,448; 1997 a. 35, 130, 181,252,275; 1999 a. 89; 2001 a. 95.

Cross reference: See also ch. HFS 98, Wis. adm. code.

Judicial Council **Note, 1990** Sub.(7) (d) [created] conforms the standard for admission of testimony by telephone or live audio–visual means at hearings under this section to that governing other evidentiary criminal proceedings. [Re Order eff. 1–1–91] Neither sub.(3), the due process clause, or the equal protection clause provide a right to a **jury** trial in recommitment proceedings. State v. M.S. 159 Wis. 2d 206,464 N.W.2d 41 (Ct. App. 1990).

The state, and not the county, is responsible for funding the conditions for a person conditionally released under this section. Rolo v. Goers, 174 Wis. 2d 709, 497 N.W.2d 724 (Ct. App. 1993).

It is not a denial of due process for an insanity acquitee to be confined to a state health facility for so long as he or she is considered dangerous, although sane, provided that: 1) the commitment does not exceed the maximum term of imprisonment that could have been imposed for the criminal offense charged; and 2) the state bears the burden of proof that the commitment should continue because the individual is a danger to himself, herself, or others. State v. Randall, 192 Wis. 2d 800, 532 N.W.2d 94 (1995).

The sentence of a defendant convicted of committing a crime while committed due to a prior not guilty by reason of mental disease or defect commitment under s. 971.17 may not be served concurrent with the commitment. State v. Szulczewski, 209 Wis. 2d 1,561 N.W.2d 781 (Ct. App. 1997).

A court may not order a prison sentence consecutive to an s. 971.17 commitment. **A** sentence can only be imposed concurrent or consecutive to another sentence. State v. Harr, 211 Wis. 2d 584,568 N.W.2d 307 (Ct. App. 1997).

A commitment under this section is legal cause under s. 973.15 (8) to stay the sentence of a defendant who commits **a** crime while serving the commitment. Whether to stay the sentence while the commitment is in effect or to begin the sentence immediately is within the sentencing court's discretion. State v. Szulczewski,216 Wis. 2d 494,574 N.W.2d 660 (1998).

Sub.(3) (c) is unconstitutional to the extent that it allows administration of psychotropic medication to an inmate based on **a** finding of incompetence to refuse without there being a finding that the inmate is dangerous to himself or others. Enis. v. DHSS, 962 F. Supp. 1192 (1997).

973.055 Domestic abuse assessments. **(1)** If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse assessment of $50 for each offense if:

(a) 1. The court convicts the person of a violation of a crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19, 940.20 (1m), 940.201, 940.21, 940.225, 940.23, 940.285, 940.30, 940.305, 940.31, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125 or of a municipal ordinance conforming to s. 940.201, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125; and

2. The court finds that the conduct constituting the violation under subd. 1. involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child; or

(b) The court convicts a person under s. 813.12 (8) (a) or a conforming municipal ordinance.

(2) (a) If the assessment is imposed by a court of record, after the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(b) If the assessment is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the state treasurer as provided in s. 66.01 14 (1) (bm).

(3) All moneys collected from domestic abuse assessments shall be deposited by the state treasurer in s. 20.435 (3) (hh) and utilized in accordance with s. 46.95.

(4) A court may waive part or all of the domestic abuse assessment under this section if it determines that the imposition of the full assessment would have a negative impact on the offender's family.

History: 1979 c. 111; 1979 c. 221 s. 2202 (20); 1979 c. 355; 1981 c. 20 s. 2202 (20) (s); 1983 a. 27 s. 2202 (20); 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 262,319; 1995 a. 27,201,343,353; 1997 a. 27, 35, 143; 1999 a. 150 s. 672; 1999 a. 18.5; 2001 a. 16.

CHAPTER *975*
SEX CRIMES LAW

Cross–referenee: See definitions in **s.** 967.02

975.001 Definition. In this chapter, "department" means the department of health and family services.

History: 1989 a. 31; 1995 a. 27 **s.** 9126 (19).

975.01 End of commitments; declaration of policy.

(1) No person may be committed under this chapter after July 1, 1980.

(2) The legislature finds and declares that persons violating s. 940.225, 948.02, 948.025 or 948.06 or committing crimes when motivated by a desire for sexual excitement may be in need of specialized treatment. The legislature intends that the department should provide treatment for those persons.

History: 1975 c. 184 **s.** 13; 1975 c. 421; 1979 c. 117; 1987 a. 332 s. 64; 1993 a. 227.

The trial court had no authority to vacate a sex crimes act commitment for the purpose of sentencing the offender under the criminal code. State v. Machner, 101 Wis. **2d** 79,303 N.W.2d 633 (1981).

Repeal of the Wisconsin sex crimes act. 1980 WLR 941.

975.06 Commitment to the department. (1) (a) If the department recommends specialized treatment for the defendant's mental or physical aberrations, the court shall order a hearing on the issue of the need for specialized treatment unless such hearing is expressly waived by the defendant. The hearing shall be conducted by the court or as provided in par. (b). The court may consider any department rule established in accordance with ch. 227 establishing criteria for recommending specialized treatment. The defendant shall be afforded the opportunity to appear with counsel; process to compel the attendance of witnesses and the production of evidence; and a physician, or clinical psychologist of defendant's choosing to examine the defendant and testify in defendant's behalf. If unable to provide counsel or expert witness, the court shall appoint such to represent or examine the defendant.

(b) The hearing shall be to a jury, unless the defendant waives a jury. The number of jurors shall be determined under s. 756.06 (2) (b). The procedure shall be substantially like a jury trial in a civil action. The judge may instruct the jurors in the law. No verdict is valid or received unless agreed to and signed by five–sixths of the jurors. **At** the time of ordering a jury to be summoned, the court shall fix the date of hearing, which date shall be not less than 30 days nor more than 40 days after the demand for the jury was made. The court shall submit to the jury the following form of verdict:

STATE OF WISCONSIN

.... County

Members of the Jury:

Do you find from the evidence that the defendant .... (Insert name) .... is in need of specialized treatment? Answer "Yes" or "No".

(2) If, upon completion of the hearing as required in sub. (1), it is found that the defendant is in need of specialized treatment the court shall commit the defendant to the department. The court may stay execution of the commitment and place the defendant on probation under ch. 973 with a condition of probation that the defendant receive treatment in a manner to be prescribed by the court. If the defendant is not placed on probation, the court shall order the defendant conveyed by the proper county authorities, at county expense, to the sex crimes law facility designated by the department.

(3) Probation under sub. (2) shall be construed as a commitment to the department for the purposes of continuation of control as provided in this chapter.

(4) If, upon the completion of the hearing required in sub. (1), it is found that the defendant is not in need of such specialized treatment the court shall sentence the defendant as provided in ch. 973.

(5) If records of the department are required for any hearing under this chapter, they shall be made available upon a subpoena directed to the coordinator of the special review board of the department, who may respond in person or designate an agent to produce the records of the department.

(6) Persons committed under this section who are also encumbered with other sentences, whether concurrent with or consecutive to the commitment, may be placed by the department in any of the facilities listed in s. 975.08 (2) or (3) (a). Such facilities may be regarded as state prisons for the purpose of beginning the other sentences, crediting time served on them, and computing parole eligibility dates.

(7) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendant's mental condition and if the facility to which the defendant is conveyed under sub. (2) determines that the defendant should be subject to such a court order, the facility may file with the court with notice to the counsel for the defendant, the defendant and the district attorney, a motion for a hearing, under the standard specified in s. 51.61 (1) (g) 4., on whether the defendant is not competent to refuse medication or treatment. **A** report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this subsection, the court without a jury shall determine the defendant's competency to refuse medication or treatment. At the request of the defendant, the defendant's counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this subsection. If the district attorney, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall determine without a jury the defendant's competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. Upon consent of all parties and approval by the court for good cause shown, testimony may be received into the record of the hearing by telephone or live audiovisual means. If the state proves by evidence that is clear and convincing that the defendant is not competent to refuse medication or treatment, under the standard specified in s. 51.61 (1) (g) 4., the court shall make a determination and issue as part of the defendant's commitment order an order that the defendant is not competent to refuse medication or treatment and that whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.

History: 1973 c. 44; 1975 c. 155, 199,200; 1977 **c.** 318; 1977 c. 447 **s.** 210; 1981 c. 20; 1989 a. 31; 1995 a. 268; **Sup.** Ct. Order No. 96-08, 207 Wis. **2d** xv (1997); 1999 a. 85.

Legislative Council Note, **1975:** This bill inserts provisions for a jury trial in the procedures to commit (s. 975.06) and recommit (s. 975.14) convicted defendants for special treatment under the Sex Crimes **Law.** In State ex rel. Farrell v. Stovall (1973), 59 Wis. **2d** 148, the Wisconsin Supreme Court ruled, on equal protection grounds, that hearings on commitment and recommitment under the Sex Crimes Law must give the defendant the same rights as a proceeding under **Ch.** 51 (commitment for mental illness); i.e., a hearing on the issue to a jury. This bill provides for a 12–person jury, but allows the defendant to request a 6–person jury **or** waive a jury. It also requires that jury verdicts favoring special treatment must be agreed to by five–sixths of the jurors. The five–sixths requirement is drawn from ch. 51, and is also the standard for civil actions (see s. 270.25 [805.09 (2)]). [Bill 259–A]

A commitment to the department does not constitute cruel and unusual punishment. Howland **v.** State, 51 Wis. 2d 162, 186 N.W.2d 319.

The defendant is entitled to a jury determination on the question of his sexual deviancy at his initial commitment and any recommitment under s. 975.14. The procedure is substantially like a **jury** trial in a civil action. Some distinctions as to judicial review and release are still permitted. State ex rel. Farrell v. Stovall, 59 Wis. 2d 148, 207 N.W.2d 809.

A defendant, convicted of rape, committed while out on bail awaiting a new trial on a prior rape charge, who was placed on probation and ordered to receive outpatient treatment as a sex deviate upon the department's recommendation, did not, after retrial and conviction of the first offense and change in the department's report, establish trial court abuse of discretion in committing him to the department. Cousins **v.** State, 62 Wis. 2d 217, 214 N.W.2d 315.

A court may impose a criminal sentence consecutive to a sex crimes commitment. State v. Kruse, 101 Wis. 2d 387, 305 N.W.2d 85 (1981).

975.07 The effect of appeal from a judgment of conviction. (1) The right of a defendant to appeal from the judgment of conviction is not affected by this chapter.

(2) If a person who has been convicted and committed to the department appeals from a conviction, the execution of the commitment to the department shall not be stayed by the appeal except as provided in sub. (3).

(3) If the committing court is of the opinion that the appeal was taken in good faith and that the question raised merits review by the appellate court, or when there has been filed with the court a certificate that a judge of an appellate court is of the opinion that questions have been raised that merit review, the judge of the court in which the person was convicted, or in the case of the judge's incapacity to act, the judge by whom the certificate was filed, may direct that such person be released on bond under such conditions as, in the judge's opinion, will insure the person's submission to the control of the department at the proper time if it is determined on the appeal that the department is entitled to custody.

History: 1993 a. 486.

975.08 Notice of commitments; treatment, transfer, use of other facilities. (1) If a court commits a person to the department under s. 975.06 it shall at once notify the department of such action in writing.

(2) The department shall then arrange for the person's treatment in the institution best suited in its judgment to care for him or her. It may transfer him or her to or from any institution, including any correctional institution listed under s. 302.01, to provide for his or her needs and to protect the public. The department may irrespective of the person's consent require him or her to participate in vocational, physical, educational and correctional training and activities; may require such modes of life and conduct as seem best adapted to fit him or her for return to full liberty without danger to the public; and may make use of other methods of treatment and any treatment conducive to the correction **of** the person and to the prevention of future violations of law by him or her.

(3) (a) The department may make use of law enforcement, detention, parole, medical, psychiatric, psychological, educational, correctional, segregative and other resources, institutions and agencies, public or private, within the state. The department may enter into agreements with public officials for separate care and special treatment, in existing institutions, of persons subject to the control of the department under this chapter.

(b) Nothing contained in par. (a) gives the department any of the following:

1. Control over existing institutions or agencies not already under its control.

2. Power to make use of any private agency or institution without that agency's or institution's consent.

(4) Placement of a person by the department in any institution or agency, not operated by the department, or the person's discharge by such institution or agency, shall not terminate the control of the department over the person. No person placed in such institution or agency may be released therefrom except to the department or after approval of such release by the department.

History: 1981 c. 20; 1989 a. 31; 1993 a. 486; 1999 a. 85.

975.09 Periodic examination. (1) The department shall make periodic examinations of all persons within its control under s. 975.06 for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These examinations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding one year. The department shall keep written records of all examinations and of conclusions predicated thereon, and of all orders concerning the disposition or treatment of every person under its control. Failure of the department to examine a person committed to it or to make periodic examination does not entitle the person to a discharge from the control of the department, but does entitle the person to petition the committing court for an order of discharge, and the court shall discharge the person unless it appears in accordance with sub. (3) that there is necessity for further control.

(2) If the person petitions the court for discharge under sub. (1), the person may appear in court with counsel and compel the attendance of witnesses and the production of evidence. The person may have a physician or clinical psychologist of the person's choosing examine the person and the medical records in the institution to which confined or at some suitable place designated by the department. If unable to provide counsel, the court shall appoint counsel to represent the person. Section 975.06 (1) governs the procedure of the hearing.

(3) If, after a hearing, it is found that discharge from the control of the department of the person to whom the order applies would be dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality, the court shall dismiss the petition. If it is found that discharge from the control of the department would not be dangerous to the public for the causes stated, the court shall order that the person be discharged from the control of the department.

History: 1979 c. 117.

Minimum due process requirements for reexamination of a sex crimes commitment between the initial commitment and expiration of the maximum time is discussed. State ex rel. Terry v. Percy, 95 Wis. 2d 476, 290 N.W.2d 713 (1980).

At hearing under sub. (3), the state's burden of proof is to establish the need for control by a preponderance of the evidence. State v. Hanson. 100 Wis. 2d 549. 302 N.W.2d 452 (1981).

Reexamination of sex crimes commitment is discussed. State v. Higginbotham, 110 Wis. 2d 393, 329 N.W.2d 250 (Ct. App. 1982).

975.10 Parole. (1) Any person committed as provided in this chapter may be paroled if it appears to the satisfaction of the department of health and family services after recommendation by a special review board, appointed by the department, a majority of whose members shall not be connected with the department, that the person is capable of making an acceptable adjustment in society. Before a person is released on parole under this section, the department of health and family services shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department of health and family services a written statement waiving the right to be notified. Probation, extended supervision and parole agents of the department of corrections shall supervise persons paroled under this section.

(2) If a parolee under sub. (1) violates the conditions of parole, the department of corrections may initiate a proceeding before the division of hearings and appeals in the department of administration. Unless waived by the parolee, a hearing examiner for the division shall conduct an administrative hearing and enter an order either revoking or not revoking parole. Upon request of either party, the administrator of the division shall review the order. If the parolee waives the final administrative hearing, the secretary of health and family services shall enter an order either revoking or not revoking parole.

History: 1981 c. 266; 1989 a. 31, 107; 1995 a. 27 s. 9126 (19); 1997 a. 283.

The special review board has no power to recommend forfeiture of good time of a prisoner State ex rel. Farrell v. Schubert, 52 Wis. 2d 351, 190 N.W.2d 529.

The special review board. Schmidt, 1973 WLR 172.

975.11 Duration of control. The department shall keep every person committed to it under s. 975.06 under its control and shall retain the person, subject to the limitations of s. 975.12 under supervision and control, so long as in its judgment such control is necessary for the protection of the public. The department shall discharge any such person as soon **as** in its opinion there is reasonable probability that the person can be given full liberty without danger to the public, but no person convicted of a felony shall, without the written approval of the committing court, be discharged prior to 2 years after the date of the person's commitment.

History: 1993 a. 486.

975.12 Termination of control. (1) Every person committed to the department under this chapter who has not been discharged as provided in this chapter shall be discharged at the expiration of one year or the expiration of the maximum term prescribed by the law for the offense for which he or she was committed subject to sub. (2) and the credit provisions of **s.** 973.155, whichever period of time is greater, unless the department has petitioned for civil commitment of the person under s. 51.20. For the purpose of this subsection, sentence shall begin at noon of the day of the commitment by the court to the department.

(2) All commitments under **s.** 975.06 for offenses committed after July 1, 1970, shall be subject to **ss.** 302.11 and 302.12. If the department is of the opinion that release on parole under **s.** 53.11 (7) (a), 1981 stats., would be dangerous to the public, it shall petition for civil commitment under **s.** 51.20.

(3) Every person subject to the extended control of the department under **ss.** 975.13 to 975.15, 1977 stats., shall be discharged 5 years from the date of the commencement of extended control unless previously discharged under **s.** 975.15. If the department is of the opinion that release of a person from extended control would be dangerous to the public, it shall petition for civil commitment under s. 51.20.

History: *1977 c. 353; 1979 c. 117; 1983 a. 528 s. 28;* 1989a.31.

Equal protection requires that **a** sex offender be credited with pre-conviction detention time in order to accelerate the date of expiration of the maximum term under s. 975.12. Milewski v. State, 74 Wis. 2d 681, 248 N.W.2d 70.

A ch. 980 commitment is not an extension **of a** commitment under ch. 975, and ch. 975.12 does not limit the state's ability to seek a separate commitment under ch. 980 **of** a person originally committed under ch. 975. State v. **Post,** 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

975.15 Review by court of orders of the department. During any period of extended control, but not more often than semiannually, a person may apply to the committing court for a reexamination of his or her mental condition and the court shall fix a time for hearing the matter. The proceeding shall be as provided in **s.** 51.20(16), except as otherwise provided in this section.

History: 1975 c. 430 s. 80; 1977 c. 428 s. **115;** 1979 c. 117.

975.16 Appeal from judgment of committing court. (1) If, under this chapter the court affirms an order of the department, the person whose liberty is involved may appeal to the proper appellate court for a reversal or modification of the order. The appeal shall be taken as provided by law for appeals to said court from the judgment of an inferior court.

(2) At the hearing of an appeal the appellate court may base its judgment upon the record, or it may upon its own motion or at the request of either the appellant or the department refers the matter back for the taking of additional evidence. \

(3) The appellate court may confirm the order of the lower court, or modify it, or reverse it and order the appellant to be discharged.

(4) Pending appeal the appellant shall remain under the control of the department.

975.17 Option for re-sentencing. A person who has been committed under ch. 975, 1977 stats., or the department, may petition the committing court for re-sentencing. A court shall act upon any petition received, and re-sentencing shall be in accordance with ch. 973. The person shall be given credit for time served pursuant to the commitment under this chapter.

History: 1979 c. 117; 1981 c. 20.

975.18 Establishment of regulations. The department may promulgate rules concerning parole, revocation of parole, supervision of parolees, and any other matters necessary for the administration of this chapter.

CHAPTER 980

SEXUALLY VIOLENT PERSON COMMITMENTS

980.01 Definitions. In this chapter:

(1) "Department" means the department of health and family services.

(2) "Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

(4) "Secretary" means the secretary of health and family services.

(4m) "Serious child sex offender" means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in s. 948.02 (1) or (2) or 948.025 (1) against a child who had not attained the age of 13 years.

(5) "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification.

(6) "Sexually violent offense" means any of the following:

(a) Any crime specified in s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07.

(b) Any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 or 943.10 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

(c) Any solicitation, conspiracy or attempt to commit a crime under par. (a) or (b).

(7) "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.

History: 1993 a. 479; 1995 a. 77 s. 9126 (19); 1997 a. 284,295.

Chapter 980 creates a civil commitment procedure primarily intended to provide treatment and protect the public, not to punish the offender. As such the chapter does not provide for "punishment" in violation of the constitutional prohibitions against double jeopardy or ex post facto laws. State v. Carpenter, 197 Wis. 2d 252, 541 N.W.2d 105 (1995).

Chapter 980 does not violate substantive due process guarantees. The definitions of "'mental disorder" and "dangerous" are not overbroad. The treatment obligations under ch. 980 are consistent with the nature and duration of commitments under the chapter and the lack of a preconunitment finding of treatability is not offensive to due process requirements. State v. Post, 197 Wis. 2d 279,541 N.W.2d 115 (1995).

Chapter 980 does not violate equal protection guarantees. The state's compelling interest in protecting the public justifies the differential treatment of the sexually violent persons subject to the chapter. State v. Post. 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

A child enticement conviction under a statute that had been repealed and recreated under a new statute number was a sexually violent offense under sub. (61 although the former number was not listed therein. State v. Irish, 210 Wis. 2d 107,565 N.W.2d 141 (Ct. App. 1997).

Under sub. (7), a "mental disorder that makes it substantially probable that the person will engage in acts of sexual violence" is a disorder that predisposes the affected person to sexual violence. A person diagnosed with "antisocial personality disorder" coupled with another disorder may be found to be sexually violent. State v. Adams, 223 Wis. 2d 60,588 N.W.2d 336 (Ct. App. 1998).

Definitions inch. 980 serve a legal, and not medical, function. The court will not adopt a definition of pedophilia for ch. 980 purposes. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 587 (Ct. App. 1998).

That the stale's expert's opined that pedophilia is a lifelong disorder did not mean that commitment was based solely on prior bad acts rather than a present condition. Jury instructions are discussed. State v. Matek, 223 Wis. 2d 611,589 N.W.2d 441 (Ct. App. 1998).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel. 227 Wis. 2d 389,597 N.W.2d 697 (1999).

The definition of "sexually violent person" includes conduct prohibited by a previous version of a statute enumerated in sub. (6) as long as the conduct prohibited under the predecessor statute remains prohibited under the current statute. State v. Pharm, 2000 WI App 167,238 Wis. 2d 97,617 N.W.2d 163.

The Kansas Sexually Violent Predator Act comports with due process requirements, does not run afoul of double jeopardy principles, and is not an *ex post facto* law. Kansas v. Hendricks, 521 U.S. 346, 138 L. Ed. 2d 501 (1997).

The constitutionality of Wisconsin's Sexual Predator Law. Straub & Kachelski. Wis. Law. July, 1995.

980.015 Notice to the department of justice and district attorney. (1) In this section, "agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(2) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

(a) The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment of a person who has been convicted of a sexually violent offense.

(b) The anticipated release from a secured correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), of a person adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(c) The termination or discharge of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect under s. 971.17.

(3) The agency with jurisdiction shall provide the district attorney and department of justice with all of the following:

(a) The person's name, identifying factors, anticipated future residence and offense history.

(b) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

(4) Any agency or officer, employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this section.

Ilistory: 1993 a. 479; 1995 a. 77; 1997 a. 205,283; 1999 a. 9.

The "appropriate district attorney" under sub. (2) is the district attorney in the county of conviction or the county to which prison officials propose to release the person. In re Commitment of Goodson, 199 Wis. 2d 426,544 N.W.2d 611 (Ct. App. 1996).

980.02 Sexually violent person petition; contents; filing. (1) A petition alleging that a person is a sexually violent person may be filed by one of the following:

(a) The department ofjustice at the request of the agency with jurisdiction, as defined in s. 980.015 (1), over the person. If the department of justice decides to file a petition under this paragraph, it shall file the petition before the date of the release or discharge of the person.

(b) If the department ofjustice does not file a petition under par. (a), the district attorney for one of the following:

1. The county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(2) A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(a) The person satisfies any of the following criteria:

1. The person has been convicted of a sexually violent offense.

2. The person has been found delinquent for a sexually violent offense.

3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(ag) The person is within 90 days of discharge or release, on parole, extended supervision or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), or from a secured group home, as defined in s. 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

(3) A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under sub. (2) (a) was an act that was sexually motivated as provided under s. 980.01 (6) (b), the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(4) A petition under this section shall be filed in any of the following:

(a) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

(am) The circuit court for the county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(b) The circuit court for the county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or a commitment order.

(5) Notwithstanding sub. (4), if the department of justice decides to file a petition under sub. (1) (a), it may file the petition in the circuit court for Dane County.

History: 1993 a. 479; 1995 a. 77.225; 1997 a. 27,205,283; 1999 a. 9.

A ch. 980 Commitment is not an extension of a commitment under ch. 975, and s. 975.12 does not limit the state's ability to seek a separate commitment under ch. 980 of a person originally committed under ch. 975. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

For purposes of determining the proper time to file a ch. 980 petition under sub. (2) (ag), a sentence imposed for a sexually violent offense includes a sentence imposed consecutively to any sentence for a sexually violent offense. State v. Keith, 216 Wis. 2d 61,573 N.W.2d 888 (Ct. App. 1997).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel. 227 Wis. 2d 389,597 N.W.2d 697 (1999).

In deciding whether there is a substantial probability that the subject will commit future acts of sexual violence, the trier of fact is free to weigh expert testimony that conflicts and decide which is more reliable, to accept or reject an expert's testimony, including accepting only parts of the testimony, and to consider all non–expert testimony. State v. Kienitz, 227 Wis. 2d 423, 597 N.W.2d 712 (1999).

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688,605 N.W.2d 598 (Ct. App. 1999)

In a trial on a petition filed under sub. (2), the state has the burden to prove beyond a reasonable doubt that the petition was filed within 90 days of the subject's release or discharge based on a sexually violent offense. State v. Thiel, 2000 WI 67,235 Wis. 2d 823,612 N.W.2d 94. See also State v. Thiel, 2001 WI App 52,241 Wis. 2d 439, 625 N.W.2d 321.

While a commitment under ch. 980 is civil: a court does not lose subject matter jurisdiction because a petition is filed under a criminal case number. State v. Pharm, 2000 WI App 167,238 Wis. 2d 97,617 N.W.2d 163.

The mandatory release date is not excluded in determining whether under sub. (2) (ag) a petition is filed within "90 days of discharge or release." State v. Pharm, 2000 WI App 167,238 Wis. 2d 97,617 N.W.2d 163.

The time limit in sub. (2) (ag) is mandatory. There is no authority for the state to hold a person beyond the discharge date of a criminal sentence in order to file a ch. 980 petition. State v. Thomas, 2000 WI App 162,238 Wis. 2d 216,617 N.W.2d 230.

Although sub. (2) (ag) refers to the current juvenile code, ch. 938, and makes no reference to the 1993–94 juvenile code. ch. 48, the circuit court has authority to proceed under ch. 980 against a person adjudicated delinquent under the former ch. 48. State v. Gibbs, 2001 WI App 83,242 Wis.2d 640,625 N.W. 2d 666.

Keith is inapplicable to juveniles. The concept of consecutive sentences is foreign in the context of juvenile adjudications and dispositions. It was proper under sub. (2) (ag) to file a ch. 980 petition two days prior to the defendant's discharge from the sexual offense disposition although the defendant was subject to another adjudication that did not expire, State v. Wolfe, 2001 WI App 136,246 Wis. 2d 233,631 N.W.2d 240.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136,246 Wis. 2d 233. 631 N.W.2d 240.

When a ch. 980 petition was filed within 90 days of release from a sentence for an offense that was not a sexually violent offense, which was being served concurrently with a shorter sentence imposed for a sexually violent offense. the petition was timely. State v. Treadway, 2002 WI App 195, ___ Wis. 2d. ___, 651 N.W.2d 334.

980.03 Rights of persons subject to petition. (1) The circuit court in which a petition under s. 980.02 is filed shall conduct all hearings under this chapter. The court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(2) Except as provided in ss. 980.09 (2) (a) and 980.10 and without limitation by enumeration, at any hearing under this chapter, the person who is the subject of the petition has the right to:

(a) Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

(b) Remain silent.

(c) Present and cross-examine witnesses.

(d) Have the hearing recorded by a court reporter.

(3) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under s. 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under s. 980.05. Notwithstanding s. 980.05 (2), if the person, the person's attorney, the department of justice or the district attorney does not request a jury trial, the court may on its own motion require that the trial be to a jury of 12. A verdict of a jury under this chapter is not valid unless it is unanimous.

(4) Whenever a person who is the subject of a petition filed under s. 980.02 or who has been committed under s. 980.06 is required to submit to an examination under this chapter, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (c). If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination and participate in the trial or other proceeding on the person's behalf. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of an expert or professional person appointed by a court under this subsection to perform an examination and participate in the trial or other proceeding on behalf of an indigent person. An expert or professional person appointed to assist an indigent person who is subject to a petition may not be subject to any order by the court for the sequestration of witnesses at any proceeding under this chapter.

(5) Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audiovisual means.

History: 1993 a. 479; 1997 a. 252; 1999 a. 9.

There are circumstances when comment on the defendant's silence is permitted. If a defendant refuses to be interviewed by the state's psychologist and the defense attorney challenges the psychologist's findings based on the lack of an interview, it is appropriate for the psychologist to testify about the refusal. State v. Adams, 223 Wis. 2d 60. 588 N.W.2d 336 (Ct. App. 1998).

If all jurors agree that the defendant suffers from a mental disease. unanimity requirements are met, even if the jurors disagree on which disease predisposes the defendant to reoffend. State v. Pletz, 2000 WI App 221,239 Wis. 2d 49,619 N.W.2d 97.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136,246 Wis. 2d 233,631 N.W.2d 240.

980.04 Detention; probable cause hearing; transfer for examination. (1) Upon the filing of a petition under s. 980.02, the court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is cause to believe that the person is eligible for commitment under s. 980.05 (5). A person detained under this subsection shall be held in a facility approved by the department. If the person is serving a sentence of imprisonment, is in a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or is committed to institutional care, and the court orders detention under this subsection, the court shall order that the person be transferred to a detention facility approved by the department. A detention order under this subsection remains in effect until the person is discharged after a trial under s. 980.05 or until the effective date of a commitment order under s. 980.06, whichever is applicable.

(2) Whenever a petition is filed under s. 980.02, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

(3) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

(4) The department shall promulgate rules that provide the qualifications for persons conducting evaluations under sub. *(3)*.

(5) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under sub. (2), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

History: 1993 a. 479; 1995 a. 77; 1999 a. 9.

Cross Reference: See also ch. HFS 99, Wis. adm. code.

The rules of evidence apply to probable cause hearings under ch. 980. The exceptions to the rules for preliminary examinations also apply. Although s. 907.03 allows an expert to base an opinion on hearsay, an expert's opinion based solely on hearsay cannot constitute probable cause. State v. Watson, 227 Wis. 2d 167,595 N.W.2d 403 (1999).

In sub. (2), "in custody" means in custody pursuant to ch. 980 and does not apply to custody under a previously imposed sentence. State v. Brissette, **230** Wis. 2d 82, 601 N.W.2d 678 (Ct. App. 1999).

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136,246 Wis. 2d 233,631 N.W.2d 240.

The 72-hour time limit in sub. (2) is directory rather than mandatory. However, the individual's due process rights prevent the state from indefinitely delaying the probable cause hearing when the subject of the petition is in custody awaiting the hearing and has made a request for judicial substitution. State v. Beyer, 2001 WI App 184,247 Wis. 2d 1,632 N.W.2d 872.

Sub. (3) is not a rule regarding the admissibility of expert testimony. It provides the procedure for determining probable cause to believe a person is a sexually violent offender. The general rule for determining the qualification of an expert applies. State v. Sprosty, 2001 WI App 231.248 Wis. 2d 480, 636 N.W.2d 213.

980.05 Trial. (1) A trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person shall commence no later than 45 days after the date of the probable cause hearing under s. 980.04. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

(2) At the trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.

(2) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under this section be to a jury of 12. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under s. 980.04. If no request is made, the trial shall be to the court. The person, the person's attorney or the district attorney or department of justice, whichever is applicable, may withdraw his, her or its request for a jury trial if the 2 persons who did not make the request consent to the withdrawal.

(3) (a) At a trial on a petition under this chapter, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

(b) If the state alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated as provided in s. 980.01 (6) (b), the state is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(4) Evidence that the person who is the subject of a petition under s. 980.02 was convicted for or committed sexually violent offenses before committing the offense or act on which the peti-

tion is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(5) If the court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under s. 980.06. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

History: 1993 a. 479; 1999 a. 9.

Sub. (1m) extends the rule protecting prearrest silence under the right against self–incrimination to the refusal of a commitment subject to participate in a formal evaluation prior to the filing of the commitment petition. State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997).

Sub. (Im) does not require a sworn petition. There is no constitutional right to a sworn complaint in a criminal case. State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997).

This section does not confine expert testimony to any specific standard nor mandate the type or character of relevant evidence that the state may choose to meet its burden of proof. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998).

The standard of review for commitments under ch. 980 is the standard applicable to the review of criminal cases — whether the evidence could have led the trier of fact to find beyond a reasonable doubt that the person subject to commitment is a sexually violent person. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d (1999).

Sub. (Im) provides a respondent with a statutory right to be competent at trial. The procedure to effect that right should adhere to ss. 971.13 and 971.14. State v. Smith, 229 Wis. 2d 720.600 N.W.2d 258 (Ct. App. 1999).

The right to a jury trial under ch. 980 is governed by sub. (2) rather than case law governing the right to a jury trial in criminal proceedings. State v. Bernstein, 231 Wis. 2d 392,605 N.W.2d 555 (1999).

The sub. (2) requirement that the 2 persons who did not request the withdrawal of a request for a jury trial consent to the withdrawal does not require a personal statement from the person subject to the commitment proceeding. Consent may be granted by defense counsel. State v. Bernstein, 231 Wis. 2d 392,605 N.W.2d 555 (1999).

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications inch. **980** proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688,605 N.W.2d 598 (Ct. App. 1999)

Sub. (2) does not require that a respondent be advised by the court that a jury verdict must be unanimous in order for the withdrawal of a request for a jury trial to be valid. State v. Denman, 2001 WI App 96,243 Wis. 2d 14, 626 N.W.2d 296.

Chapter 980 respondents are afforded the same constitutional protections as criminal defendants. Although the doctrine of issue preclusion may generally apply in ch. 980 cases, application of the doctrine may be fundamentally unfair. When new evidence of victim recantation was offered at the ch. 980 trail, the defendant had a due process interest in gaining admission of the evidence to ensure accurate expert opinions on his mental disorder and future dangerousness when the experts' opinions presented were based heavily on the fact that the defendants committed the underlying crime. State v. Sorenson, 2002 W178.254 Wis. 2d 54,646 N.W.2d 354.

A sexually violent person committed under ch. 980 preserves the right to appeal, as a matter of right, by filing postverdict motions within 20 days of the commitment order. State v. Treadway, 2002 WI App 195, ___ Wis. 2d. ___., 651 N.W.2d 334.

A parole and probation agent who had been employed full--time in a specialized sex–offender unit for 3 years during which he had supervised hundreds of sex offenders was prepared by both training and experience to assess a sex offender, and was qualified to render an opinion on whether he would reoffend. That the agent did not provide the nexus to any mental disorder did not render his testimony inadmissible. State v. Treadway, 2002 WI App 195, ___ Wis. 2d. ___, 651 N.W.2d 334.

980.06 Commitment. If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person. A commitment order under this section shall specify that the person be placed in institutional care.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27,275,284; 1999 a. 9.

In the event that there is a failure to develop an appropriate treatment program, the remedy is to obtain appropriate treatment and not supervised release. State v. Seibert, 220 Wis. 2d 308.582 N.W.2d 745 (Ct. App. 1998).

Chapter 980 and s. 51.61 provide the statutory basis for a court to issue an involuntary medication order for individuals who suffer from a chronic mental illness and are committed pursuant to ch. 980. State v. Anthony D.B. 2000 WI 94,237 Wis. 2d 1, 614 N.W.2d 435.

The incremental infringement by s. 980.06 on the liberty interests of those who have a sexually violent, predatory past and are currently suffering from a mental disorder that makes them dangerous sexual predators does not violate constitutional guarantees of due process. State v. Ransdell, 2001 WI App 202,247 Wis. 2d 613,634 N.W.2d 871.

Although ch. 51 is more "lenient" with those who are subject to its provisions than is ch. 980, the significant differences between the degree of danger posed by each of the two classes of persons subject to commitment under the two chapters, as well as the differences in what must be proven in order to commit under each, does not result in a violation of equal protection. State v. Williams, 2001 WI App 263,249 Wis. 2d 1, 637 N.W.2d 791.

Chapter 980, as amended, is not a punitive criminal statute. Because whether a statute is punitive is a threshold question for both double jeopardy and ex post facto analysis, neither of those clauses is violated by ch. 980. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215,646 N.W.2d 315.

The mere limitation of a committed person's access to supervised release does not impose a restraint to the point that it violates due process. As amended, ch. 980 serves the legitimate and compelling state interests of providing treatment to the dangerously mentally ill and protecting the public from the dangerously mentally ill. The statute and is narrowly tailored to meet those interest, and, as such, it does not violate substantive due process. State v. Rachel. 2002 WI 81.254 Wis. 2d 215,646 N.W.2d 375.

Commitment under ch. 980 does not require a separate factual finding that an individual's mental disorder involves serious difficulty for the person in controlling his or her behavior. Proof that the person's mental disorder predisposes the individual to engage in acts of sexual violence and establishes a substantial probability that the person will again commit those acts necessarily and implicitly includes proof that the person's mental disorder involves serious difficulty in controlling his or her behavior. State v. Laxton, 2002 WI 82,254 Wis. 2d 185,647 N.W.2d 784.

980.063 Deoxyribonucleic acid analysis requirements. (1) (a) If a person is found to be a sexually violent person under this chapter, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) The results from deoxyribonucleic acid analysis of a specimen under par. (a) may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

(2) The department of justice shall promulgate rules providing for procedures for defendants to provide specimens under sub. (1) and for the transportation of those specimens to the state crime laboratories for analysis under s. 165.77.

History: 1995 a. 440.

980.065 Institutional care for sexually violent persons. (1m) The department shall place a person committed under s. 980.06 at the secure mental health facility established under s. 46.055, the Wisconsin resource center established under s. 46.056 or a secure mental health unit or facility provided by the department of corrections under sub. (2).

(1r) Notwithstanding sub. (1m), the department may place a female person committed under s. 980.06 at Mendota Mental Health Institute, Winnebago Mental Health Institute, or a privately operated residential facility under contract with the department of health and family services.

(2) The department may contract with the department of corrections for the provision of a secure mental health unit or facility for persons committed under s. 980.06. The department shall operate a secure mental health unit or facility provided by the department of corrections under this subsection and shall promulgate rules governing the custody and discipline of persons placed by the department in the secure mental health unit or facility provided by the department of corrections under this subsection.

History: 1993 a. 479; 1997 a. 27; 1999 a. 9; 2001 a. 16.

980.067 Activities off grounds. The superintendent of the facility at which a person is placed under s. 980.065 may allow the person to leave the grounds of the facility under escort. The department of health and family services shall promulgate rules for the administration of this section.

History: 2001 a. 16.

980.07 Periodic reexamination; report. (1) If a person has been committed under s. 980.06 and has not been discharged under s. 980.09, the department shall conduct an examination of his or her mental condition within 6 months after an initial commitment under s. 980.06 and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. At the time of a reexamination under this section, the person who has been committed may retain or seek to have the court appoint an examiner as provided under s. 980.03 (4).

(2) Any examiner conducting an examination under this section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's medical records and shall provide a copy of the report to the court that committed the pcrson under s. 980.06.

(3) Notwithstanding sub. (1), the court that committed a person under **s.** 980.06 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order.

History: 1993 a. 479; 1999 a. 9.

The 6–month period under sub. (1) for the 1st reexamination does not begin to run until the court conducts the dispositional hearing and issues an initial commitment order under s. 980.06 (2). State v. Marberry, 231 Wis. 2d 1, 605 N.W.2d 512 (Ct. App. 1999).

As part of an annual review, an involuntary medication order must be reviewed **fol**lowing the same procedure used to obtain the initial order. State v. Anthony D.B. 2000 WI 94. 237 Wis. 2d 1. 614 N.W.2d **435.**

It is within the committed person's discretion to ask for an independent examination. The trial court does not have discretion to refuse the request. State v. Thiel, 2001 WI App 32,241 Wis. 2d 465, 626 N.W.2d 26.

The 6–month time period in sub. (1) for an initial reexamination is mandatory. When DHFS took nearly two years to provide a reexamination, release was the only appropriate remedy. State ex rel. Marberry v. Macht, 2002 WI App 133, ___ Wis. 2d ___, 648 N.W.2d 522.

980.08 Petition for supervised release. (1) Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

(2) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney or department of justice, whichever is applicable and, subject to **s.** 980.03 (2) (a), refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney or department ofjustice, whichever is applicable.

(3) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If any such examiner believes that the person is appropriate for supervised release under the criterion specified in sub. (4), the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release. The county shall pay the costs of an examiner appointed under this subsection as provided under **s.** 51.20 (18) (a).

(4) The court, without a jury, shall hear the pctition within 30 days after the report of the court–appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c) and (d). The court shall grant the petition unless the state proves by clear and convincing evidence that the person is still a sexually violent person and that it is still substantially probable that the person will engage in acts of sexual violence if the pcrson is not continued in institutional care. In making a decision under this subsection, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's mental history and present mental condition. where the person will live, how the person will support himself or herself and what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. **A** decision under this subsection on a petition filed by a person who is a serious child sex offender may not be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

(5) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department shall make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence, as detcrmincd by the department under s. 980.105. The department and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. In developing a plan for where the person may reside while on supervised release, the department shall consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the department of corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am). If the person **is** a serious child sex offender, the plan shall address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The department may contract with a county department, under **s.** 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within GO days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county: except that the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also the person's county of residence.

(6m) An order for supervised release places the person in the custody and control of the department. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court under sub. (5). **A** person on supervised release is subject to the conditions set by the court and to the rules of the department. Before a pcrson is placed on supervised release by the court under this section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the department alleges that a released person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under the rules of the department. The department shall submit a statement showing probable cause

of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 72 hours after the detention, excluding Saturdays, Sundays and legal holidays. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department may detain the person in a jail or in a hospital, center or facility specified by s. 51.15 (2). The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under s. 980.09 or until again placed on supervised release under this section.

Uistory: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9 ss. 3223L, 3232p to 3238d; 1999 a. 32; 2001 a. 16.

Cross Reference: See also ch. HFS 98, Wis. **adm.** code.

Sub. (6m) [formerly s. 980.06 (2) (d)] requires post–hearing notice to the local law enforcement agencies. In re Commitment of Goodson, 199 Wis. 2d 426.544 N.W.2d 611 (Ct. App. 1996).

Whether in a proceeding for an initial ch. 980 commitment or a later petition for supervised release, there is no requirement that the state prove the person is treatable. State v. Seibert, 220 Wis. 2d 308, 582 N.W.2d 745 (Ct. App. 1998).

There is no exception under sub. (5) for a court to refuse to order release after it determines under sub. (4) that release is appropriate. If treatment programs are unavailable, the court shall order a county. through DHFS, to prepare a plan and place the person on supervised release in that county The court may order the county to create whatever programs or facilities are necessary to accommodate the supervised release: State v. Sprosty, 227 Wis. 2d 316,595 N.W.2d 692 (1999).

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389,597 N.W.2d 697 (1999).

An institutionalized *sex* offender who agreed to a stipulation providing supervised release, giving up his right to a jury trial on his discharge petition in exchange, had a constitutional right to enforcement of the agreement. State v. Krueger, 2001 WI App 76,242 Wis. 2d 793,626 N.W. 2d 83.

An indigent sexually violent person is constitutionally entitled to assistance *of* counsel in bringing a first appeal as **of** right from a denial **of** his or her petition for supervised release. State ex rel. Seihert v. Macht, 2001 WI 67,244 Wis. 2d 378.627 N.W.2d 881.

A person subject to a proceeding to revoke supervised release is entitled to the same due process protections as afforded persons in probation and parole revocation proceedings. Notice of the grounds that are the basis for the revocation must be given. A court can only base a revocation on the grounds of public safety under sub. (6m) when notice has been properly given. State v. VanBronkhorst, 2001 WI App 190,247 Wis. 2d 247,633 N.W.2d 236.

A sexual assault need not occur and the person's behavior need not be criminal before the court can conclude that there is a substantial probability that a person will reoffend if institutional care is not continued. The relevant inquiry under sub. (4) is whether the behavior indicates a likelihood to reofiend. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213.

A trial court's decision whether to grant a request for conditional release is subject to a discretionary standard of review of whether the trial court properly exercised its discretion in making its decision. State v. Wenk, 2001 WI App 268,248 Wis. 2d 714, 637 N.W.2d 417.

980.09 Petition for discharge; procedure. (1) PETITION WITH SECRETARY'S APPROVAL. (a) If the secretary determines at any time that a person committed under this chapter is no longer a sexually violent person, the secretary shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the department of justice or the district attorney's office that filed the petition under s. 980.02 (1), whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

(b) At a hearing under this subsection, the district attorney or the department of justice, whichever filed the original petition, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person of his, her or its choice. The hearing shall be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (h), the petitioner shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criterion specified in s. 980.08 (4), whether to modify the petitioner's existing commitment order by authorizing supervised release.

(2) PETITION WITHOUT SECRETARY'S APPROVAL. (a) A person may petition the committing court for discharge from custody or supervision without the secretary's approval. At the time of an examination under s. 980.07 (1), the secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the report of the department's examination under s. 980.07. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The Committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

(b) If the court determines at the probable cause hearing under par. (a) that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this paragraph, the committed person is entitled to be present and to the benefit of the protections afforded to the person under s. 980.03. The district attorney or the department of justice, whichever filed the original petition, shall represent the state at a hearing under this paragraph. The hearing under this paragraph shall be to the court. The state has the right to have the committed person evaluated by experts chosen by the state. At the hearing, the state has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the person shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criterion specified in s. 980.08 (4), whether to modify the person's existing commitment order by authorizing supervised release.

History: 1993 a. 479; 1999 a. 9.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279.541 N.W.2d 115 (1995).

Sub. (2) (a) does not contemplate an evidentiary hearing as is provided under sub. (2) (b). Under sub. (2) (a), the hearing is a paper review of the reexamination reports that allows the committing court to weed out frivolous petitions. State v. Paulick, 213 Wis. 2d 432,570 N.W.2d 626 (Ct. App. 1997).

The right to counsel under sub. (2) (a) is subject to the same standards and procedures for resolving right to counsel issues as in criminal cases. State v. Thiel, 2001 WI App 32,241 Wis. 2d 465,626 N.W.2d 26.

Sub. (2) (a) does not allow unlimited submission of evidence, but does allow the submission of a second medical examination report. State v. Thayer. 2001 WI App 51,241 Wis. 2d 417,626 N.W.2d 811.

980.10 Additional discharge petitions. In addition to the procedures under s. 980.09. a committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition for discharge without the secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate. If the person has not previously filed a petition for

discharge without the secretary's approval, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate.

History: 1993 a. 479.

Persons committed under *ch. 980* must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

980.101 Reversal, vacation or setting aside of judgment relating to a sexually violent offense: effect. (1) In this section, "judgment relating to a sexually violent offense" means a judgment of conviction for a sexually violent offense, an adjudication of delinquency on the basis of a sexually violent offense, or a judgment of not guilty of a sexually violent offense by reason of mental disease or defect.

(2) If, at any time after a person is committed under s. 980.06, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the petition under s. 980.02 (2) (a), the person may bring a motion for postcommitment relief in the court that committed the person. The court shall proceed as follows on the motion for postcommitment relief:

(a) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense committed by the person, the court shall reverse, set aside, or vacate the judgment under s. 980.05 (5) that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody or supervision of the department.

(bj If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) but there arc other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation under s. 980.02 (2) (a), the court shall determine whether to grant the person a new trial under s. 980.05 because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

(3) An appeal may be taken from an an order entered under sub. (2) as from a final judgment.

History: 2001 a. 16.

980.105 Determination of county of residence. The department shall determine a person's county of residence for the purposes of this chapter by doing all of the following:

(1) The department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

(2) The department shall apply the criteria for consideration of residence and physical presence under sub. (1) to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement or commitment that was in effect when the petition was filed under s. 980.02.

History: 1995 a. 276; 2001 a. 16.

980.11 Notice concerning supervised release or discharge. (1) In this section:

(a) "Act of sexual violence" means an act or attempted act that is a basis for an allegation made in a petition under s. 980.02 (2) (a).

(b) "Member of the family" means spouse, child, sibling, parent or legal guardian.

(c) "Victim" means a person against whom an act of sexual violence has been committed.

(2) If the court places a person on supervised release under s. 980.08 or discharges a person under s. 980.09 or 980.10, the department shall do all of the following:

(am) Make a reasonable attempt to notify whichever of the following persons is appropriate, if he or she can be found, in accordance with sub. *(3):*

1. The victim of the act of sexual violence.

2. An adult member of the victim's family, if the victim died as a result of the act of sexual violence.

3. The victim's parent or legal guardian, if the victim is younger than 18 years old.

(bm) Notify the department of corrections.

(3) The notice under sub. (2) shall inform the department of corrections and the person under sub. (2) (am) of the name of the person committed under this chapter and the date the person is placed on supervised release or discharged. The department shall send the notice, postmarked at least 7 days before the date the person committed under this chapter is placed on supervised release or discharged, to the department of corrections and to the last–known address of the person under sub. (2) (am).

(4) The department shall design and prepare cards for persons specified in sub. (2) (am) to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this chapter and any other information the deparhnent determines is necessary. The department shall provide the cards, without charge, to the department of justice and district attorneys. The department of justice and district attorneys shall provide the cards, without charge, to persons specified in sub. (2) (am). These persons may send completed cards to the department of health and family services. All records or portions of records of the department of health and family services that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (l), except as needed to comply with a request by the department of corrections under s. 301.46 (3) (d).

History: 1993a.479; 1995 a. 27 s. 9126 (19); 1995 a. 440; 1997 a. **181;** 1999 a. 9.

980.12 Department duties; costs. (1) Except as provided in ss. 980.03 (4) and 980.08 (3), the department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all costs relating to the evaluation, treatment and care of persons evaluated or committed under this chapter.

(2) By February 1, 2002, the department shall submit a report to the legislature under s. 13.172 (2) concerning the extent to which pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen has been required as a condition of supervised release under s. 980.06, 1997 stats., or s. 980.08 and the effectiveness of the treatment in the cases in which its use has been required.

History: 1993 a. 479; 1997 a. 284; 1999 a. 9.

980.13 Applicability. This chapter applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on or after June 2, 1994.

History: 1993 a. 479.

Chapter MPSW 1

AUTHORITY AND PRACTICE

Note: Chapter SFC 1 was created as an emergency rule effective **April** 26,1993.
Note: Chapter SFC 1 was renumbered ch. MPSW 1 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 1.01 Authority. This chapter is adopted pursuant to **ss.** 15.08 (5) (b), 15.405 (7c) (d) and 227.11 (2), Stats.
History: Cr. Register, November, 1993, No. 455, eff. 12–1–93.

MPSW 1.02 Definitions. In chs. MPSW 1 to 6, 8, and 10 to 20:

(1) "Board" means the marriage and family therapy, professional counseling, and social work examining board.

(1q) "Credential" means a certificate or a license granted by the board.

(2) "Department" means the department of regulation and licensing.

(2m) "Psychotherapy" means the diagnosis and treatment of mental, emotional, or behavioral disorders, conditions, or addictions through the application of methods derived from established psychological or systemic principles for the purpose of assisting people in modifying their behaviors, cognitions, emotions, and other personal characteristics, which may include the purpose of understanding unconscious processes or intrapersonal, interpersonal, or psychosocial dynamics.

(3) "Section" means either the marriage and family therapist section, the professional counselor section, or the social worker section of the marriage and family therapy, professional counseling and social work examining board.

History: Cr. Register, November, 1993. No. 455, eff. 12–1–93; am. (intro.), Register. May, 1999, No. 521, eff. 6–1–99; **CR 02–105: am. (intro.), (1), (3), cr. (1q), (2m), Register October 2002 No. 562, eff. 11–1–02.**

MPSW 1.03 Rule–making. (1) PROCEDURE. The board may approve and adopt rules proposed by any section of the board.

(2) RULES COMMITTEE. (a) *Composition.* The rules committee of the board is composed of one professional member from each section, and 2 public members. The board chair shall appoint the public members from any of the sections of the board.

(b) *Authority and responsibility.* The rules committee shall act for the board in rule–making proceedings except for final approval under sub. (1).

History: Cr. Register, November, 1993, No. 455, eff. 12-1-93.

MPSW 1.04 Application procedures for all sections of the board. (1) An application for certification **is** incomplete until all materials requested are received by the board office, in English or accompanied by a certified English translation.

(2) An applicant for any credential under ch. 457, Stats., shall make application on forms prescribed by both the examination provider for the examination for the credential for which the applicant is applying and the board. The applicant may not sit for an examination unless the applicant meets the requirements of both the examination provider and the interested section of the board.

(a) The forms prescribed by the examination provider shall be supplied to the applicant by the department, but must be returned to the examination provider at least 60 days prior to the examination date for which the applicant is applying.

(b) The forms prescribed by the board shall be provided to the applicant by the department, and must be returned to the board office at least 60 days prior to the examination date for which the applicant is applying.

Note: The board's mailing address **is** Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board, Department of Regulation and Licensing, P.O. Box 8935, Madison, Wisconsin 53708–8935.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; **CR 02–105: am. (2), Register October 2002 No. 562, eff. 11–1-02.**

MPSW 1.05 Examination provisions for all sections. (1) The board or its designee shall administer the examinations required of applicants for certification as a social worker, advanced practice social worker, or independent social worker, or for licensure as a clinical social worker, marriage and family therapist or professional counselor at least once a year.

(3) The examination process consists of a 2 part examination. Part I is an examination pertaining to the profession; part II is an examination on provisions of the Wisconsin Statutes and Administrative Code that pertain to the profession. Parts I and II of the examination administered under this chapter test entry level competency in the practice area for which the credential is sought. Parts I and II of the examination seek to determine that an applicant's knowledge is sufficient to protect public health, safety and welfare.

(5) The board may deny release of grades or issuance of a credential if the board determines that the applicant violated rules of conduct or otherwise acted dishonestly.

(6) Applicants shall pass each part of the examination. An applicant who fails either part I or part II of the examination shall retake that part of the examination. The passing grade on each part of the examination is determined by the board to represent competence sufficient to protect the public health, safety and welfare. The board may adopt the recommended passing score of the examination provider for part I of the examination.

(7) An applicant for certification as a social worker, advanced practice social worker, or independent social worker or for licensure as a clinical social worker, need not take part II of the examination if within the 5 years preceding the date of application, the applicant took and passed part II in the process of applying for and receiving another social worker credential from the section.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; r. (2) and (4). Register, October, 1998, No. 514, eff. 11–1–98; CR 01–064: cr. (7), Register December 2001 No. 552, eff. 1–1-02; **CR 02–105: am. (1), (5) and (7), Register October 2002 No. 562, eff. 11–1–02.**

MPSW 1.06 Examination review procedure for all sections of the board. An applicant who fails an examination may request a review of the examination, as permitted by the examination provider. If a review is permitted, the following conditions apply:

(1) The applicant shall file a written request to the board within 30 days of the date on which examination results were mailed and pay the fee under s. RL 4.05.

(2) Examination reviews are by appointment only, and shall be limited to the time permitted by the examination provider for part I of the examination and 1 hour for part II of the examination.

(3) Reviews shall be conducted prior to the application deadline date for the next examination for the particular certificate category.

(4) An applicant may review part I of the examination only once.

(5) Part II of the examination may be reviewed by telephone. During a telephone review an applicant shall be provided with the statute or administrative code reference number and the topic of the test questions the applicant failed.

(6) An applicant may not be accompanied during the review by any person other than the proctors.

(7) Bound reference books shall be permitted. Applicants may not remove any notes from the area. Notes shall be retained by the proctor and made available to the applicant for use at a hearing, if desired. The proctor shall not defend the examination nor attempt to refute claims of error during the review.

History: Cr. Register. November. 1993, No. 455, eff. **12–1–93.**

MPSW 1.07 Claims of examination error. An applicant for any credential issued by the board who claims an error in the examination may file a written request for board review in the board office within 30 days of the date the examination was reviewed. The board shall review the claim and notify the applicant in writing of the board's decision and any resulting grade changes. Claims of examination error which are not filed within 30 days of an examination review shall be denied. The request shall include:

(1) The applicant's name and address.

(2) The type of credential applied for.

(3) A description of the perceived error, including specific questions or procedures claimed to be in error.

(4) The facts which the applicant intends to prove. including reference text citations or other supporting evidence for the applicant's claim.

History: Cr. Register, November, 1993, No. 455, eff. **12–1–93; CR 02–105: am. (intro.) and (2), Register October 2002 No. 562, eff. 11–1–02.**

MPSW 1.08 Credential renewal procedures for all sections of the board. (1) Each person granted a credential under ch. **457,** Stats., is certified or licensed for the current period only. To renew certification or licensure, a credential holder shall by July 1 of the odd--numbered year following initial Certification or licensure and every **2** years thereafter file with the board an application for renewal on a form prescribed by the board, and submit the fee under **s.** 440.08 (2), Stats.

(2) A credential holder who fails to renew certification or licensure shall cease and desist from practice and from use of the professional title. Within **5** years following the renewal date, a credential holder may renew the expired credential without examination by filing the required renewal application, the renewal fee, and the late renewal fee under s. 440.08 (3), Stats. A credential holder who fails to renew certification or licensure within 5 years of the renewal date may be reinstated by complying with the requirements for obtaining initial certification or licensure, including educational and examination requirements which apply at the time application is made.

(3) An applicant for reinstatement of certification or licensure following disciplinary action shall meet requirements in sub. (1) and may be required to successfully complete an examination as the board prescribes. **An** applicant who applies for reinstatement more than 5 years after the date of the order imposing discipline against the applicant may be reinstated by complying with the requirements for obtaining initial certification or licensure, including educational and examination requirements which apply at the time the application for reinstatement is made.

(4) The credential and certificate of biennial certification or licensure shall be displayed in a prominent place by each person while certified or licensed by the board.

(5) Every credential holder shall notify the department, in writing, of a change of name or address within 30 days of the change.

History: Cr. Register, November, 1993, No. 455. eff. **12–1–93; CR 02–105: am., Register October 2002 No. 562, eff. 11–1–02.**

MPSW 1.09 Alcohol and drug counseling. A person credentialed by the board may use the title "alcohol and drug counselor" or "chemical dependency counselor" only if he or she is certified as an alcohol and drug counselor or as a chemical dependency counselor through a process recognized by the department of health and family services. **A** person credentialed by the board may treat alcohol or substance dependency or abuse as a specialty only if he or she is certified as a substance abuse counselor under **s.** HFS **75.02 (84).**

History: CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.

MPSW 1.10 Professional liability insurance. (1) Except as provided in sub. (2), a person licensed as a clinical social worker, marriage and family therapist, or professional counselor may not practice clinical social work, marriage and family therapy, or professional counseling unless he or she has in effect professional liability insurance in the amount of at least $1,000,000 for each occurrence and $3,000,000 for all occurrences in one year.

(2) Subsection (1) does not apply to a person practicing clinical social work, marriage and family therapy, or professional counseling as an employee of a federal, state, or local governmental agency, if the practice is part of the duties for which he or she is employed and is solely within the confines of or under the jurisdiction of the agency by which he or she is employed.

History: CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.

MPSW 1.11 Psychometric testing. (1) A psychometric test is a measurement procedure for assessing psychological characteristics in which a sample of an examinee's behavior is obtained and subsequently evaluated and scored using a standardized process. The term does not apply to unstandardized questionnaires and unstructured behavior samples or to teacher– or trainer– made tests used to evaluate performance in education or training.

(2) The competent and responsible use of a psychometric test requires a combination of knowledge, skills, abilities, training, and experience, and the test results must be viewed within the broader context of a psychological assessment or a psychosocial evaluation.

(3) Psychometric testing **is** restricted to psychologists and persons acting under the supervision of a psychologist, and to licensed marriage and family therapists. licensed professional counselors, and licensed clinical social workers. **A** licensee of the board may engage in psychometric testing only if the appropriate section of the board has received and approved the following information demonstrating generic and specific qualifications to perform psychometric testing:

(a) Academic training at the graduate or postgraduate level that covered:

1. Descriptive statistics.
2. Reliability and measurement error.
3. Validity and meaning of test scores.
4. Nonnative interpretation of test scores.
5. Selection of appropriate tests.
6. Test administration procedures.
7. Ethnic, racial, cultural, gender. age and linguistic variables.

8. Testing individuals with disabilities.

(b) *An* affidavit from a professional qualified to supervise psychometric testing that the individual licensee has acquired supervised experience and acquired specific qualifications for the responsible selection, administration, scoring and interpretation of one or more particular psychometric tests, including, if appropriate, use of the test(s) in particular settings or for specific purposes. Particular settings include an employment context, an educational context, a career and vocational counseling context, a health care context, or a forensic context. Specific purposes include classification, description, prediction, intervention planning, tracking, training and supervision.

(4) The only professionals qualified to supervise psychometric testing are licensed psychologists who have the education, training and experience to select, administer, score and interpret specific tests.

(5) A person credentialed by the board may not use a testing instrument for diagnostic purposes unless he or she satisfies the requirements in *(3)* (a) and (b), but may use a test for screening or referral purposes if he or she satisfies *(3)* (b).

History: CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.

Chapter MPSW 2

DEFINITIONS FOR PRACTICE OF SOCIAL WORK

Note: Chapter SFC 2 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 2 was renumbered ch. MPSW 2 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 2.01 Definitions. In chs. MPSW 2 to 8:

(1) "Accredited" means accredited by the council on social work education.

(2) "Certified advanced practice social worker" means a person who holds a certificate under s. 457.08 (2), Stats.

(4) "Certified independent social worker" means a person who holds a certificate under s. 457.08 (3), Stats.

(5) "Certified social worker" means a person who holds a certificate under s. 457.08 (1) or 457.09, Stats.

(6) "Client" means the individual, group, business, agency, school, organization, or association for whom the social worker provides professional services. The term "client" includes the term and concept of "patient."

(7) "Clinical field training" means a minimum of one academic year in the supervised practice of clinical social work services consisting of assessment; diagnosis; treatment, including psychotherapy and counseling; client–centered advocacy; consultation; and evaluation. "Clinical field training" does not include indirect social work service, administrative, research, or other practice emphasis.

(8) "Clinical social work practice" means providing services for the diagnosis, treatment, and prevention of mental and emotional disorders in individuals, families, and groups, to restore, maintain, and enhance social functioning through treatment interventions that include psychosocial evaluation, counseling of individuals, families, or groups, referral to community resources, advocacy, facilitation of organizational change to meet social needs, and individual, marital, or group psychotherapy.

(9) "Clinical social work concentration" means a course of study with a primary focus on resolving intrapsychic and interpersonal problems by means of direct contact with clients at the individual, small group and family level. A concentration on community or organizational problems, social planning or policy development does not constitute a clinical social work concentration. To qualify as a master's or doctoral degree in social work with a concentration in clinical social work, clinical courses must comprise at least 40% of non–field placement credits in the degree program. A clinical social work concentration must include theory and practice courses from among the following:

(a) Case management.

(b) Psychopathology in social work.

(c) Clinical assessment and treatment of specific populations and problems, such as children, adolescent, elderly, alcohol and drug abuse, family or couples relationships.

(d) Psychopharmacology.

(e) Psychotherapeutic interventions.

(f) Electives such as family therapy, social work with groups, sex– or gender–related issues and topics.

(10) "Counseling" means the process of identifying and providing options for the resolution or mitigation of an undesired circumstance. Counseling characteristically involves the provision of education, support, advice, guidance, or assistance with planning, and other services of a similar character but does not necessarily involve a long term counselor–client relationship.

(11) "Interpersonal" means between 2 or among 3 or more individuals or groups.

(12) "Intrapsychic" means occurring within one's personality or psyche.

(12m) "Licensed clinical social worker" means a person who holds a license under s. 457.08 (4), Stats.

(13) "Primary clinical setting" means a facility, or a unit within a facility, whose primary purpose is to treat persons with a DSM diagnosis.

(14) "Psychotherapy" means the use of learning, conditioning methods and emotional reactions in a professional relationship to assist persons to modify feelings, attitudes and behaviors which are intellectually, socially or emotionally maladjustive or ineffectual.

(15) "Regionally accredited college or university" means a college or university which is accredited by any of the following bodies: the New England association of schools and colleges, the middle states association of colleges and schools, the north central association of colleges and schools, the northwest association of schools and colleges, the southern association of colleges and schools, the western association of schools and colleges.

(16) "Social worker" has the meaning given in s. 457.01 (10), Stats., and is interpreted to be a general term describing all persons who hold any certificate or license under s. 458.08, Stats., or any rules adopted pursuant to s. 457.03 (3), Stats., establishing levels of social work practice.

(17) "Supervised clinical field training" means training in a primary clinical setting which must include at least 2 semesters of field placement where more than 50% of the practice is to assess and treat interpersonal and intrapsychic issues in direct contact with individuals, families or small groups.

(18) "Supervision" means supervision of the professional practice of social work in the applied skills of the profession.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; **am. (5),** Register, November, 1996. No. 491. **eff.** 12–1–96; CR 00–147: r. and recr. (9), renum. (11), (12), (13), (14) and (15) to be (14), (15), (16), (18) **and** (19), and cr. (11), (12), (13), and (17). Register August 2001 No. 548, eff. 9–1–01; **CR 02–105: am. (intro.), (8), (11), (13) and (16), renum. (3) to be (12m) and am., r. (19), Register October 2002 No. 562, eff. 11–1–02.**

Chapter MPSW 3

APPLICATION FOR SOCIAL WORKER CERTIFICATION OR LICENSURE

Note: Chapter SFC 3 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 3 was renumbered ch. MPSW 3 under s. 13.93(2m)(b) 1., Stats., and corrections made under s. 13.93(2m)(b) 7., Stats.. Register October 2002 No. 562.

MPSW 3.01 Application for certification as a social worker. In addition to paying the fee under s. 440.05 (1), Stats., an applicant for certification as a social worker shall submit a completed, signed application form together with:

(1) A certificate of professional education, signed and sealed by the chancellor, dean or registrar of the school from which the applicant has graduated with a bachelor's, master's or doctoral degree in social work.

(2) Verification that the school or program which awarded the social work degree was accredited by or a pre-accreditation program of, the council on social work education, at the time the applicant graduated from the program or school.

(3) Verification of successful completion of the examination required.

(4) Verification of the applicant's credential in all jurisdictions in which the applicant has ever been credentialed.

(5) All pertinent information relating to any convictions or pending charges for all crimes and any traffic offenses which did or could result in revocation or suspension of the applicant's driver's license.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 02–105: am. (4), Register October 2002 No. 562, eff. 11–1–02.

MPSW 3.05 Application for certification as an advanced practice social worker. In addition to paying the fee under s. 440.05 (1), Stats., an applicant for certification as an advanced practice social worker shall submit the completed, signed application form and:

(1) A certificate of professional education, signed and sealed by the chancellor, dean or registrar of the school from which the applicant has graduated with a master's or doctoral degree in social work.

(2) Verification that the school or program which awarded the social work degree was accredited, or a pre–accredited program of the council on social work education, at the time the applicant graduated from the program or school.

(3) Verification of successful Completion of the examination required.

(4) Verification of the applicant's credential in all jurisdictions in which the applicant has ever been credentialed.

(5) All pertinent information relating to any convictions or pending charges for all crimes and any traffic offenses which did or could result in revocation or suspension of the applicant's driver's license.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 02–105: am. (4), Register October 2002 No. 562, eff. 11–1–02.

MPSW 3.07 Application for certification as an independent social worker. In addition to paying the fee under s. 440.05 (1), Stats., an applicant for certification as an independent social worker shall submit the completed, signed application form and:

(1) A certificate of professional education, signed and sealed by the chancellor, dean or registrar of the school from which the applicant has graduated with a master's or doctoral degree in social work.

(2) verification that the school or program which awarded the social work degree was accredited, or a pre–accreditation, program of the council on social work education, at the time the applicant graduated from the program or school.

(3) An affidavit that the applicant, after receiving a master's or doctoral degree and after receiving certification as an advanced practice social worker, has obtained at least 3,000 hours of social work practice in no less than 2 years under the supervision of a supervisor approved by the social worker section. Pre–certification supervised practice shall meet the criteria under s. MPSW 4.01.

(4) Verification of successful completion of the examination approved by the section, or verification that the applicant has obtained certification of the academy of certified social workers (ACSW) of the national association of social workers.

(5) Verification of the applicant's credential in all jurisdictions in which the applicant has ever been credentialed.

(6) All pertinent information relating to any convictions or pending charges for all crimes and any traffic offenses which did or could result in revocation or suspension of the applicant's driver's license.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 01–153: am. (3), Register July 2002 No. 559, eff. 8–1–02; CR 02–105: am. (3) and (5), Register October 2002 No. 562, eff. 11–1–02; reprinted to restore dropped copy in (3), Register January 2003 No. 565.

MPSW 3.09 Application for licensure as a clinical social worker. In addition to paying the fee under s. 440.05 (1), Stats., an applicant for licensure as a clinical social worker shall submit the completed, signed application form and:

(1) A certificate of professional education, signed and sealed by the chancellor, dean or registrar of the school from which the applicant has graduated with a master's or doctoral degree in social work with a concentration in clinical social work, including completion of supervised clinical field training.

(2) Verification that the school or program which awarded the social work degree was accredited or a pre-accreditation program of the council on social work education at the time the applicant graduated from the program or school.

(3) An affidavit that the applicant, after receiving a master's or doctoral degree and after receiving certification as an advanced practice social worker or an independent social worker, has completed at least 3,000 hours of clinical social work practice in no less than 2 years, including at least 1,000 hours of face–to–face client contact and including DSM diagnosis and treatment of individuals, under the supervision of a supervisor approved by the social worker section. Pre–certification supervised practice shall meet the criteria under s. MPSW 4.01.

(4) Verification of successful completion of the examination approved by the section, or verification that the applicant is a board certified diplomat (BCD) of the American board of examincrs in clinical social work.

(5) Verification of the applicant's credential in all jurisdictions in which the applicant has ever been credentialed.

(6) All pertinent information relating to any convictions or pending charges for all crimes and any traffic offenses which did or could result in revocation or suspension of the applicant's driver's license.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 01–153: am. **(3).** Register July 2002 No. 559, eff. 8–1–02; CR 02–105: am. (intro.), (3) **and** (5), Register October 2002 No. 562, eff. 11–1–02; CR 02–105: am. (3) and (5), Register October 2002 No. 562, eff. 11–1–02; **reprinted to restore dropped copy in (3), Register January 2003 No. *565*.**

MPSW 3.11 Temporary certificate or license. **(1)** The social worker section may issue a temporary certificate permitting the use of the title "social worker" to an individual who pays the fee under **s.** 440.05 (6), Stats., and who meets all the qualifications for the social worker ccrtificate cxcept for passing the required examination.

(2) The social worker section may issue a temporary certificate permitting the use of the title "advanced practice social worker" to an individual who pays the fee under s. 440.05 (6), Stats., and who meets all the qualifications for the advanced practice social worker ccrtificate except for passing the required examination.

(3) The social worker section may issue a temporary certificate permitting the use of the title "independent social worker" to an individual who pays the fee under s. 440.05 (6), Stats., and who meets all the qualifications for the independent social worker certificate cxcept for passing the required examination.

(4) The social worker section may issue a temporary license permitting the practice of clinical social work and the use of the title "clinical social worker" to an individual who pays the fee under **s.** 440.05 (6), Stats., and who meets all the qualifications for the clinical social worker license except for passing the required examination.

(5) The temporary credential expires upon notification of failure of the examination or expiration of the 9 month period, whichever is earlier. The temporary credential of an individual who fails the examination must be returned to the social worker section. The temporary credential may not be renewed.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; am. Register, December, 1995, No. 480, eff. 1–1–96; CR 01–095: am. Register March 2002 No. 555, eff. 4–1–02; CR 02–105: r. and recr., Register October 2002 No. 562, eff. 11–1–02.

MPSW 3.12 Reciprocal certificate or license. **(1)** The social worker section shall grant a certificate as a social worker under **s.** 457.08 (1), Stats., to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

(a) The applicant has a current credential as a social worker or the substantial equivalent in good standing in another state or territory of the United States.

(b) The requirements for the grant of the credential in the other state or territory of the United States are substantially equivalent to the requirements for the grant of the certificate under s. 457.08 (1), Stats.

(c) The applicant has disclosed all discipline ever taken or currently pending against the applicant or any professional credential held by the applicant by any credentialing authority of any state or territory of the United States.

(d) If the applicant has been convicted of a crime, or of a traffic offense which did or could result in the suspension or revocation of the applicant's driver's license, or the applicant has such charges pending against the applicant, the applicant has disclosed all information necessary for the section to determine whether the circumstances of the pending charge or conviction are substantially related to the duties of practice under a social worker certificate.

(e) The applicant passes an examination approved by the social worker section that tests knowledge of state law relating to social work.

(2) The social workcr scction shall grant a certificate as an advanced practice social worker under s. 457.08 (1) and (2), Stats., to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

(a) The applicant has a current credential as an advanced practice social worker or the substantial equivalent in good standing in another state or temtory of the United States.

(b) The requirements for the grant of the credential in the other state or territory of the United States are substantially equivalent to the requirements for the grant of a certificate under s. 457.08 (2), Stats.

(c) The applicant has disclosed all discipline ever taken or currently pending against the applicant or any professional credential held by the applicant or by any credentialing authority of any state or territory of the United States.

(d) If the applicant has been convicted of a crime, or of a traffic offense which did or could result in the suspension or revocation of the applicant's driver's license, or the applicant has such charges pending against the applicant, the applicant has disclosed all information necessary for the section to determine whether the circumstances of the pending charge or conviction are substantially related to the duties of practice under an advanced practice social worker certificate.

(e) The applicant passes an examination approved by the social worker section that tests knowledge of state law relating to social work.

(3) The social worker section shall grant a certificate as an independent social worker under s. 457.08 (1) and (3), Stats., to an applicant who pays the fee required by **s.** 440.05 (2), Stats., and provides evidence of all of the following to the section:

(a) The applicant has a current credential as an independent social worker or the substantial equivalent in good standing in another state or territory of the United States.

(b) The requirements for the grant of the credential in the other state or territory of the United States are substantially equivalent to the requirements for the grant of a certificate under **s.** 457.08 (3), Stats.

(c) The applicant has disclosed all discipline ever taken or currently pending against the applicant or any professional credential held by the applicant by any credentialing authority of any state or territory of the United States.

(d) If the applicant has been convicted of a crime, or of a traffic offense which did or could result in the suspension or revocation of the applicant's driver's license, or the applicant has such charges pending against the applicant, the applicant has disclosed all information necessary for the section to determine whether the circumstances of the pending charge or conviction are substantially related to the duties of practice under an independent social worker certificate.

(e) The applicant passes an examination approved by the social worker section that tests knowledge of state law relating to social work.

(4) The social worker section shall grant a license as a clinical social worker under s. 457.08 (1) and (4), Stats., to an applicant who pays the fee required under s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

(a) The applicant has a current credential as a clinical social worker or the substantial equivalent in good standing in another state or territory of the United States.

(b) The requirements for granting the credential in the other state or territory of the United States are substantially equivalent

to the requirements for granting a license under s. 457.08 (4), Stats.

(c) The applicant has disclosed all discipline ever taken or currently pending against the applicant or any professional credential held by the applicant by any credentialing authority of any state or territory of the United States.

(d) If the applicant has been convicted of a crime, or of a traffic offense which did or could result in the suspension or revocation of the applicant's driver's license, or the applicant has such charges pending against the applicant, the applicant has disclosed all information necessary for the section to determine whether the circumstances of the pending charge or conviction are substantially related to the duties of practice under an independent clinical social worker certificate.

(e) The applicant passes an examination approved by the social worker section that tests knowledge of state law relating to social work.

History: Cr. Register November, 1994, No. 467, eff. 12-1-94; CR 02-105: cr. (1) (e), (2) *(e)*, **(3)** (e) and **(4)** *(e)*, am. (intro.), (a) and (b), Register October 2002 No. 562, eff. 11-1-02.

MPSW 3.13 Social worker training certificate. (1) APPLICATION REQUIREMENTS. The social worker section shall grant a training certificate to an applicant who submits the fee under s. 440.05 (6), Stats., together with the completed, signed application form and all of the following:

(a) A certified transcript of professional education verifying that the applicant has a bachelor's degree in psychology, sociology, criminal justice or another human service program approved by the section from a college or university accredited by an accrediting body nationally recognized by the secretary of the United States department of education. The certified transcript shall be sent directly to the section by the college or university.

1. To qualify as "another human service program approved by the section" under s. 457.09 (1) (c), Stats., the program shall include a major that meets the criteria in sub. (1) (a) and the applicant shall have obtained a grade point average of 2.5 or greater in the major. The major shall include all of the following:

a. Focus predominantly on course content related to providing services to individuals with difficulties in psychological and social functioning.

b. Include a course with significant content in professional ethics and values in the context of the helping professions.

c. Include a course designated as a senior seminar or capstone course in the applicant's major that pulled together all the themes of the helping professions or that applicant's major.

2. In subd. 1., "major" means an organized course of study recognized on the transcript as a major by the degree-granting institution. A collection of 30 semester credits or 40 quarter credits not defined as a particular course of study by the degree-granting institution would not qualify as a human services major. "Individualized" majors developed in conjunction with the degree-granting institution and recognized as majors by the institution will be considered as majors, and evaluated in relation to the criteria under subd. 1. a., for predominant focus of coursework.

3. In subd. 1. a., "predominantly" means comprising at least 30 semester hours or 40 quarter credits of the major program in which the degree is granted.

Note: Related course content includes courses typically included in human services program content, such as: psychology, sociology, crisis intervention, working with diverse populations, family dynamics, therapeutic interviewing, rehabilitation, gerontology, adolescence or child welfare, interview, observation and recordkeeping skills, individual and group counseling techniques, program planning, internships, clinical placements and field practicums.

(b) Verification that the applicant is seeking to attain social worker degree equivalency under s. 457.09 (4), Stats., during the period in which the certificate is valid.

(c) Information requested by the section relating to any convictions or pending charges against the applicant for any criminal or traffic offenses.

Note: Application forms are available upon request to the Social Worker Section at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) SOCIAL WORKER DEGREE EQUIVALENCY. To attain social worker degree equivalency to a bachelor's degree in social work under the terms of s. 457.09 (4) and (4m) (b), Stats., and to qualify to take the national social work examination, a social worker training certificate holder shall demonstrate by certified transcript from an accredited college or university, sent directly to the section, that the applicant has taken at least a total of 4 courses, each consisting of a minimum of either 3 semester hours or 4 quarter hours of academic credit distributed among the following subject areas:

(a) *Social welfare policy and services.* At least one course of at least 3 semester hours or 4 quarter hours academic credit. Qualifying course work in this area shall include the history, mission and philosophy of the social work profession, the impact of social policy on health and well-being, the effect of social policy on social work practice, current social policy analysis, political and organizational processes used to influence policy, the process of policy formulation, and the framework for current social policy analysis in light of the principles of social and economic justice.

(b) *Social work practice methods with individuals, families, small groups, communities, organizations and social institutions - generalist practice methods.* At least 2 courses each consisting of at least 3 semester hours or 4 quarter hours academic credit. Qualifying coursework in these areas shall include all of the following:

1. Practice content which emphasizes professional relationships that are characterized by mutuality, collaboration, respect for the client system and incorporates use of professional social work supervision.

2. Practice assessment which focuses on the examination of client strengths and problems in the interaction among individuals and between people and their environments.

3. Knowledge, values and skills to enhance human well-being and amelioration of the environmental conditions that affect people adversely.

4. Approaches and skills for practice with clients from differing social, cultural, racial, religious, spiritual and class backgrounds and with systems of all sizes.

5. Social work values and ethics.

6. Differential assessments and intervention skills to serve diverse at-risk populations.

(c) *Human behavior in the social environment, including human growth and development, and social systems theory.* At least one course of at least 3 semester hours or 4 quarter hours academic credit. Qualifying course work in this area shall include theories and knowledge of human biological, psychological, and social development, and the impact of social and economic forces on individuals and social systems.

(3) INTERNSHIP AND EMPLOYMENT. To qualify to take the national social work examination, a training certificate holder shall demonstrate to the section, by written certification from his or her supervisor sent directly to the section, that he or she engaged in and successfully completed one of the following:

(a) A human services internship that was part of the program leading to the degree the certificate holder specified to satisfy the requirement in s. 457.09 (1) (c) and (4m) (b), Stats., or completed while holding the training certificate, and involved direct practice with clients and that was supervised by a social worker certified under s. 457.08, Stats., and who has a bachelor's or master's degree in social work and provides direct, on-site supervision of the intern.

1. A human services internship shall be approved by the section provided that the supervising social worker certifies on forms provided by the department that the internship provided training and experience, and the student demonstrated competency, in each of the following areas:

a. Evaluation and assessment of difficulties in psychosocial functioning of a group or another individual.

b. Developing plans or policies to alleviate those difficulties, and either carrying out the plan or referring individuals to other qualified resources for assistance.

c. Intervention planning, which may include psychosocial evaluation and counseling of individuals, families and groups; advocacy; referral to community resources, and facilitation of organizational change to meet social needs, based on subd. 1. a.

d. Knowledge of other disciplines relevant to the evaluation of clients, plans and policies to alleviate client difficulties, and intervention planning.

e. The ability to intervene effectively on behalf of diverse populations and populations most vulnerable and discriminated against, including development of cultural competence, provision of culturally competent services, and ability to collaborate with others to develop services.

f. Application of professional ethics and standards in the delivery of social work services to clients.

2. A human services internship completed prior to August 1, 1995, that otherwise qualifies under par. (a), may be approved by the section if it was supervised by a person holding a bachelor's or master's degree in social work and in good professional standing, but who was not certified under s. 457.05, Stats.

(b) One year of social work employment that was part of the program leading to the degree the certificate holder specified to satisfy the requirements in s. 457.09 (1) (c) and (4m) (b), Stats., or completed while holding the training certificate, which involved at least 400 hours of face–to–face client contact in not less than 12 months, and that was supervised by a social worker certified under s. 457.05, Stats., who has a bachelor's or master's degree in social work and who provides direct, on--site supervision of the certificate holder during the time the certificate holder is at work.

1. One year of social work employment shall be approved by the section provided that the supervising social worker certifies on forms provided by the department, that the employment provided training and experience, and the employee demonstrated competency, in each of the following areas:

a. Evaluation and assessment of difficulties in psychosocial functioning of a group or another individual.

b. Developing plans or policies to alleviate those difficulties, and either carrying out the plan or referring individuals to other qualified resources for assistance.

c. Intervention planning, which may include psychosocial evaluation and counseling of individuals, families and groups; advocacy; referral to community resources, and facilitation of organizational change to meet social needs, based on subd. 1. a.

d. Knowledge of other disciplines relevant to the evaluation of clients, plans and policies to alleviate client difficulties, and intervention planning.

e. The ability to intervene effectively on behalf of diverse populations and populations most vulnerable and discriminated against, including development of cultural competence, provision of culturally competent services, and ability to collaborate with others to develop services.

f. Application of professional ethics and standards in the delivery of social work services to clients.

2. Social work employment completed prior to August 1, 1995, that otherwise qualifies under par. (b), may be approved by the section if it was supervised by a person holding a bachelor's or master's degree in social work and in good professional standing, but who was not certified under s. 457.08, Stats.

(4) SUPERVISION REQUIREMENTS. In addition to the minimum qualifications for supervisors specified in sub. (3), supervision of qualifying human services internship or employment shall include the direction of social work practice in a face–to–face individual session of at least one hour duration during each week of supervised practice of social work, and shall further comply with s. MPSW 4.01 (1) and (3). Supervision may be exercised by a person other than an employment supervisor.

(5) GRANTING SOCIAL WORKER CERTIFICATION. Subject to s. 457.26 (2), Stats., the section shall grant a social worker certificate to a training certificate holder who has demonstrated social worker degree equivalency, completed a supervised human services internship or social work employment, and passed the national social worker examination and state law examination, all as required under this section and s. 457.09, Stats.

(6) APPROVAL OF COURSES FOR SOCIAL WORKER DEGREE EQUIVALENCY. (a) The section may approve in advance courses offered by an accredited college or university which may be taken by a social worker training certificate holder to satisfy the requirements of sub. **(2)** (a) to (c).

(b) To obtain advance section approval under par. (a), an accredited college or university shall submit course syllabi at least 6 months prior to the commencement of the class. Section approval shall continue for *2* years unless the course content changes. After 2 years, course syllabi shall be resubmitted for approval.

History: Cr. Register, November, **1996,** No. **491,** eff. 12–1–96; cr. (1) (a) 1. to 3.. am. **(3)** (a) (intro.) **and** (b) (intro.), Register, February. 2000, No. 530, eff. 3–1–00; CR 01–059: cr. ***(6).*** Register **March** 2002 No. 555, eff. 4–1-02.

Chapter MPSW 4

SUPERVISED PRE–CERTIFICATION AND PRE–LICENSURE SOCIAL WORK PRACTICE

Note: Chapter SFC 4 was created as an emergency rule effective April 26, 1993
Note: Chapter SFC 4 was renumbered ch. MPSW 4 under s. 13.93 (2m) (h) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 4.01 Supervised pre–certification and pre–licensure social work practice. (1) Supervision of pre–certification or pre–licensure practicc of social work under s. 457.08 (3) (c) and (4) (c), Stats., shall include the direction of social work practice in face–to–face individual or groups sessions of at least one hour duration during each week of supervised practice of social work. Such supervision may be exercised by a person other than an employment supervisor. The one hour per week supervision requirement may be averaged out over the course of the period of supervision. The supervisor may exercise discretion as to the frequency, duration, and intensity of the supervision sessions to meet an average of one hour supervised session per week during the supervision period. The person supervising the pre–certification or pre–licensure practice of social work shall have adequate training, knowledge and skill to competently supervise any social work service that a social worker undertakes. Supervision of the professional practice of social work in the applied skills of the profession may be exercised by a person other than an employment supervisor. The supervisor may not permit a supervisee to engage in any social work practice that the supervisor cannot Competently supervise. All supervisors shall be legally and ethically responsible for the activities of the social work supervisee. Supervisors shall be able to interrupt or stop the supervisee from practicing in given cases, or recommend to the supervisee's employer that the employer interrupt or stop the supervisee from practicing in given cases, and to tenninate the supervised relationship if necessary.

(2) If supervision is provided in group sessions, the group shall consist of no more than 6 persons receiving supervision for every one person providing supervision, and may not credit any time which is primarily social activity with the group or supervisor as part of a supervision session. A supervision session which is provided by more than one supervisor may not be credited for more than the actual time elapsed during the supervision session, not including social activities.

(3) A period of supervised practice of social work shall include, but not be limited to, practice in each of the following activities:

(a) Evaluation and assessment of difficulties in psychosocial functioning of a group or another individual;

(b) Developing plans or policies to alleviate those difficulties, and either carrying out the plan or referring individuals to other qualified resources for assistance;

(c) Intervention planning, which may include psychosocial evaluation and counseling of individuals, families and groups; advocacy; referral to community resources; and facilitation of organizational change to meet social needs.

(4) At the end of the period of supervised practice, the candidate for certification shall have demonstrated to the candidate's supervisor competence in each of the activities listed in sub. (3).

(5) For applications for licensure as an independent social worker received after November 1, 2002, supervision may be exercised by any of the following:

(a) A licensed clinical social worker with a master's or doctorate degree in social work.

(b) A certified independent social worker with a master's or doctorate degree in social work.

(c) ***An*** individual, other than an individual specified in par. (a) or (b) who is approved in advance by the social worker section.

(6) For applications for licensure as a clinical social worker received after November 1, 2002, supervision may be exercised by any of the following:

(a) An individual licensed as a clinical social worker who has received a doctorate degree in social work.

(b) An individual licensed as a clinical social worker who has engaged in the equivalent of 5 years of full–time clinical social work.

(c) A psychiatrist or a psychologist licensed under ch. 455, Stats.

(d) An individual licensed as a clinical social worker who has received a master's degree in social work.

(e) An individual, other than an individual specified in par. (a), **(b)** or (c), who is approved in advance by the social worker section.

History: Cr. Register, November, 1993, No. 455, **eff.** 12–1–93; CR 01–020: am. (1) (b) 1. and 2., Register December 2001 No. 552, eff. 1–1–02; **CR 02–105: am. (1), r. (1) (a). (b) and (4), cr. (5) and (6), Register October 2002 No. 562, eff. 11–1–02.**

Chapter MPSW 5

SOCIAL WORK EXAMINATIONS

MPSW' 5.01 Examination.

Note: Chapter SFC 5 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 5 nas renumbered ch. MPSW 5 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93(2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 5.01 Examination. (1) An applicant for certification as a social worker, advanced practice social worker, or independent social worker or for licensure as a clinical social worker shall pass all parts of the examination required by the social worker section, unless the applicant is exempt from the examination requirement.

(2) An applicant for certification as a social worker shall successfully complete the examination consisting of the Wisconsin statutes and rules examination and an examination approved by the section. Both parts of the examination may be taken prior to completion of the required degree, upon confirmation from the applicant's school that he or she is a student in good standing and is within 6 months of graduation.

(3) An applicant for certification as an advanced practice social worker shall successfully complete the examination consisting of the Wisconsin statutes and rules examination and an examination approved by the section. Both parts of the examination may be taken prior to completion of the required degree, upon confirmation from the applicant's school that he or she is a student in good standing and is within 6 months of graduation.

(4) An applicant for certification as an independent social worker shall successfully complete the examination consisting of the Wisconsin statutes and rules examination and an examination approved by the section. Both parts of the examination may be taken prior to completion of the required period of supervised practice.

(5) An applicant for licensure as a clinical social worker shall successfully complete the examination consisting of the Wisconsin statutes and rules examination and an examination approved by the section. Both parts of the examination may be taken prior to completion of the required period of supervised practice.

Note: A listing of the examinations approved by the social worker section may he obtained from the Marriage and Family Therapy. Professional Counseling and Social Work Examining Board, c/o the Department of Regulation and Licensing, P.O. Box 8935, Madison, Wisconsin 53708–8935.

History: Cr. Register, November. 1992, No. 455, eff. 12–1–93; **CR 02–105: am. (1) to (5), Register October 2002 No. 562, eff. 11–1–02.**

Chapter MPSW 6

AUTHORIZED SOCIAL WORKER PRACTICE

Note: Chapter SFC 6 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 6 was renumbered ch. MPSW 6 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 6.01 Certified social worker. A certified social worker may evaluate and assess difficulties in psychosocial functioning, develop a plan to alleviate those difficulties, and either carry out the plan or refer clients to other qualified resources for assistance. Intervention plans may include counseling of individuals, families, and groups; advocacy; referral to community resources; and facilitation of organizational change to meet social needs based on a psychosocial evaluation. A certified social worker may not engage in psychotherapeutic activities.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93: CR 02–105: am. Register October 2002 No. 562, eff. 11–1–02.

MPSW 6.02 Certified advanced practice social worker. A certified advanced practice social worker may evaluate and intervene in complex difficulties in psychosocial functioning. Intervention plans may include counseling of individuals, families, and groups; advocacy; referral to community resources; and facilitation of organizational change to meet social needs based on a psychosocial evaluation. A certified advanced practice social worker may engage in psychotherapeutic activities only under the supervision of a person authorized by the board or by the department of health and family services to supervise the practice of clinical social work.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 02–105: am. Register October 2002 No. 562, eff. 11–1–02.

MPSW 6.03 Certified independent social worker. A certified independent social worker may evaluate and intervene in complex difficulties in psychosocial functioning. Intervention plans may include counseling of individuals, families, and groups; advocacy; referral to community resources; and facilitation of organizational change to meet social needs based on a psychosocial evaluation. A certified independent social worker may practice social work independently but may engage in psychotherapeutic activities only under the supervision of a person authorized by the board or by the department of health and family services to supervise the practice of clinical social work.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 02–105: am. Register October 2002 No. 562, eff. 11–1–02.

MPSW 6.04 Licensed clinical social worker. A licensed clinical social worker may provide services without supervision for the diagnosis, treatment, and prevention of mental and emotional disorders in individuals, families, and groups to restore, maintain, and enhance social functioning through treatment interventions which may include, but are not limited to, counseling of individuals, families and groups; referral to community resources; advocacy; and facilitation of organizational change to meet social needs; and individual, marital, and group psychotherapy; all based on a psychosocial evaluation. A licensed clinical social worker may engage in psychotherapeutic activities without supervision.

Note: A licensed clinical social worker employed in a certified outpatient mental health clinic is subject to rules of the department of health and family services regarding supervision.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 02–105: am. Register October 2002 No. 562, eff. 11–1–02.

Chapter MPSW 8

CONTINUING EDUCATION

Note: Chapter SFC 8 was renumbered ch. MPSW 8 under s. 13.93 (2m) (b) 1., Stats., and correctinnsmade under s. 13.93 (2m) (b) 7., Stats., Register Octk ber 2002 No. 562.

SFC 8.01 Continuing education required for certification renewal. History: Cr. Register, May, 1999, No. 521, eff. **6-1-99; CR 02–105: r. Register October 2002 No. 562, eff. 11–1-02.**

MPSW 8.02 Continuing education requirements for credential holders. (1) Unless granted a postponement or waiver under sub. (7), every social worker, advanced practice social worker, independent social worker, and clinical social worker shall complete at least 30 education hours in each 2–year credentialing period which begins on July 1 of each odd–numbered year as specified in s. 457.20 (2), Stats., and shall verify compliance as part of his or her application for credential renewal.

(a) The 30 continuing education hours shall be in courses and programs specified in this chapter.

(b) Of the 30 required hours, at least 4 hours shall be in the subject area of social work ethics and boundaries. The section may require that up to 2 continuing education hours in each 2–year credentialing period be acquired within other specified topic areas. Notice of any such requirement will be published in the regulatory digest that is mailed to all credential holders.

(c) In this chapter "continuing education hour" or "CEH" means a period of continuing education consisting of not less than 50 minutes.

(2) Continuing education hours shall apply only to the credentialing period in which the hours are acquired. A credential holder who applies for renewal after the renewal date specified in **s.** 457.20 (2), Shts., shall submit proof to the section that he or she has completed at least 30 continuing education hours during the 2 years immediately preceding the date of application for renewal and meet the requirements for late renewal specified in **s.** 440.08 (3), Stats. Continuing education hours submitted to satisfy this requirement for late renewal shall not be used to satisfy continuing education requirements for a subsequent renewal.

(3) Every credential holder shall retain original documents showing attendance at programs and completion of self–developed programs for at least 4 years from the time that credit is claimed for the continuing education program. At the request of the section, credential holders shall deliver their original documents to the section.

(4) Unless granted a postponement or waiver under sub. (7), a credential holder who fails to meet continuing education requirements by the renewal deadline shall cease and desist from using a social worker title protected under ch. 457, Stats., and if licensed as a clinical social worker, shall cease practice as a clinical social worker.

(5) During the time between initial certification or licensure and commencement of a full 2–year credentialing period, a new credential holder shall not be required to meet continuing education requirements for the first renewal of his or her credential, except that a person who was certified prior to November 1, 2002 and initially licensed on November 1, 2002 shall meet the continuing education requirement as if he or she had continued under the preceding certification.

(6) Applicants from other states applying under **s.** 357.15 (1), Stats., shall submit proof of completion of at least 30 continuing education hours substantially meeting the requirements of this chapter within the 2–year credentialing period prior to application.

(7) A credential holder may apply to the section for a postponement or waiver of the requirements of this chapter on grounds of prolonged illness or disability, or on other grounds constituting extreme hardship. The section shall consider each application individually on its merits, and the section may grant a postponement, partial waiver or total waiver as deemed appropriate in the circumstances.

(8) The social worker section may grant an exemption from the requirements of this chapter to a credential holder who certifies to the section that he or she has permanently retired and no longer uses a social worker title protected under ch. 457, Stats. in any professional practice and, if licensed as a clinical social worker, no longer practices as a clinical social worker.

(9) **A** credential holder who has been granted an exemption from the requirements of this chapter based on retirement From the active practice of social work may not return to the active practice of social work without submitting evidence satisfactory to the section that the holder completed at least 30 continuing education hours during the 2 years immediately preceding the date of application to return to active practice and meets the requirements for late renewal specified in **s.** 440.08, Stats.

History: Cr. Register, May, **1999,** No. 521, eff. **6–1–99;** am. (1) (intro.), (a) and (c), (2), (6) and (9). Register, January. 2001, No. 541, **eff.** 2–1–01; **CR 02–105: am. (1) (b) and (2) to (9), Register October 2002 No. 562, eff. 11–1–02.**

MPSW 8.03 Continuing education programs. (1) The social worker section does not pre–approve continuing education programs. The social worker section will accept for continuing education credit programs consisting of relevant subject matter taught by qualified presenters. The acceptability of a continuing education program depends on the subject matter of the program rather than the program's title. A continuing education program may be used to satisfy the requirements of this chapter if the subject matter of the continuing education program is one or more of the following:

(a) Social work practice, knowledge and skills.

(b) A field or subject area allied with and relevant to tbe practice of social work.

(c) Theories and concepts of human behavior and the social environment.

(d) Social work research, social policy and program evaluation, or social work practice evaluation.

(e) Social policy and program administration or management.

(f) Social work ethics. A program in social work ethics should address one or more of the topics in ch. MPSW 20.

(g) Professional boundaries.

(h) **A** subject of current importance as designated by the section.

(1m) Acceptable sponsoring organizations include, but are not limited to:

(a) Local or national professional social work associations.

(b) Accredited college and university schools of social work.

(c) Public and private agencies that provide in–house training and development programs which meet agency mission requirements.

(2) A continuing education program may take any of the following forms, with credit for relevant subject matter granted as follows:

(a) Formal presentations of relevant professional material at seminars, workshops, programs or institutes, which may include formal presentation and directed discussion of videotaped material: 1 CEH per hour of continuing education for attendees, 2 CEHs per hour of continuing education for presenters, but no additional CEHs will be granted for subsequent presentations of the same material.

(b) University, college or vocational technical adult education courses, which may include formal presentation and directed discussion of videotaped instruction: 10 CEHs per semester credit or 6.6 CEHs per quarter credit for students, 20 CEHs per semester hour or **13.2** CEHs per quarter hour for instructors, but no additional CEHs will be granted for subsequent presentations of the same material.

(c) Educational sessions at state and national conferences: 1 CEH per hour of continuing education for attendees; 2 CEHs per hour of continuing education for presenters, but no additional CEHs will be granted for subsequent presentations of the same material.

(d) Educational telephone network (ETN) courses: 1 CEH per hour of continuing education for attendees, 2 CEHs per hour of continuing education for presenters, but no additional CEHs will be granted for subsequent presentations of the same material, and ETN courses may not be used to satisfy the social work ethics requirement.

(e) Interactive internet learning courses offered by an accredited university or preapproved by the ASWB: 1 CEH per .1 CEU of instruction, but no more than 16 CEHs for interactive internet courses will be accepted in any **2** year credentialing period.

(f) Self--study courses approved by accredited college or university schools of social work, local or national professional social work organizations, or the association of social work boards, 1 CEH per credit completed, but self–study courses may not be used to satisfy the social work ethics requirement, and a maximum of 5 CEHs for self–study courses will be accepted in any **2** year credentialing period unless an exception is granted in advance by the section based on hardship or other extenuating circumstances.

(g) Authorship of a published textbook or professional resource book: 20 CEHs.

(h) Authorship of a published chapter in a textbook or professional resource book, or a professional journal article: 8 CEHs.

(i) Development of alternative media, computer software, videotapes, or audiotapes: 8 CEHs.

History: Cr. Register, May, 1999, No. 521, **eff. 6–1–99;** renum. (intro.) to be (1) (intro.) and (1j to (8) to be (1) (a) to (h), cr. (2), Register, January. 2001, *No.* 541, eff. **2–1-01; CR 02–105: am. (1) (intro.) and (f), (2) (intro.), (e) and (f), cr. (1m), Register October 2002 No. 562, eff. 11–1–02.**

MPSW 8.04 Compliance. The section may conduct audits or investigations to determine compliance with this chapter by credential holders with this chapter.

History: Cr. Register, May, 1999, No. 521, eff. **6-1–99; CR 02–105: am. Register** October **2002 No. 562, eff. 11–1-02.**

Chapter MPSW 10

DEFINITIONS FOR PRACTICE OF PROFESSIONAL COUNSELING

Note: Chapter SFC 10 was created as an emergency rule effective April 26. 1993.
Note: Chapter SFC 10 was renumbered eh. MPSW 10 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (h) 7., Stats., Register October 2002 No. 562.

MPSW 10.01 Definitions. In chs. MPSW 10 to 14:

(1) "Client" means the individual, family, group, business, agency, school, organization, or association for whom the license holder provides professional services for which the license holder is usually and customarily compensated. The term "client" includes the term and concept of "patient."

(2) "Employed full-time'' means a person is an employee of another person or entity and is paid to provide services at the direction of that employer for not less than *32* hours over the course of each calendar week.

(3) "Offer of full--time employment" means a written offer from another person or entity to become an employee of that person or entity, and be paid to provide services at the direction of that employer for not less than *32* hours over the course of each calendar week.

(5) "Regionally accredited college or university" means a college or university which is accredited by any of the following bodies: the New England association of schools and colleges, the middle states association of colleges and schools, the north central association of colleges and schools, the northwest association of schools and colleges, the southern association of colleges and schools, the western association of schools and collcges. Applicants for licensure shall prove that the college or university at which the applicant completed course work on which the applicant relies for licensure eligibility was regionally accredited at the time the applicant completed the course work.

(6) "Supervision" means the direction of professional counseling practice in face–to–face individual or group sessions lasting an average of at least one hour between the person whose practice is being supervised and the person who is providing the supervision of the practice, during each week that the person seeking licensure practices professional counseling.

History: Cr Register, November. 1993, No 455, eff 12-1 93; renum (2) to (6) to be (4) to (8), cr (2) and (3), Register. January, 1995, No 469, eff 2–1–95, **CR 02–150: am. (1), (5) and (6), r. (4), (7) and (S), Register October 2002 No. 562, eff. 11–1–02.**

Chapter MPSW 11

APPLICATION FOR PROFESSIONAL COUNSELOR LICENSURE

Note: Chapter SFC 11 **was** created as an emergency rule effective April 26. 1993.
Note: Chapter SFC 11 was renumbered ch. MPSW 11 under s. 13.93(2m) (b) 1., Stats., and corrections made under s. 13.93(2m) (h) 7., Stats., Register October 2002 No. 562.

MPSW 11.01 Application for licensure as a professional counselor. (1) In addition to paying the fee under **s.** 440.05 (1), Stats., an applicant for licensure as a professional counselor shall submit the completed, signed application fonn and:

(a) A certificate of professional education, signed and sealed by the chancellor, dean or registrar of the school from which the applicant has graduated with an approved degree. An applicant who does not have a master's or doctoral degree in professional counseling shall be considered for licensure as a professional counselor upon the professional counselors section's receipt of a complete description of the academic program which the applicant proposes as the equivalent of a master's or doctoral degree in professional counseling. The professional counselors section may request additional information as necessary to complete the evaluation of the applicant's academic program for compliance with s. MPSW 14.01 or 14.02.

(b) Verification that the institution which awarded the degree was a regionally accredited college or university, or accredited by the commission for accreditation of counseling and related educational programs, or the council on rehabilitation education at the time the applicant graduated from the school.

(c) An affidavit from the applicant that the applicant has, after receiving a master's or doctoral degree, completed the required period of supervised practice under the supervision of a person qualified to supervise the applicant's practice.

(d) Verification of successful completion of the examination required.

(e) Verification of the applicant's credential in all jurisdictions in which the applicant has ever been credentialed.

(f) If the applicant has been convicted of a crime, or of a traffic offense which did or could result in the suspension or revocation of his or her driver's license, or the applicant has such charges pending against him or her, the applicant has disclosed all information necessary for the section to determine whether the circumstances of the pending charge or conviction are substantially related to the duties of the practice under the license.

(2) An applicant may submit, but is not required *to* submit, evidence of certification by a professional organization.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; **CR 02–105: am. (1) (intro.), (a), (e) and (f) Register October 2002 No. 562, eff. 11–1–02.**

MPSW 11.015 Application for a professional counselor training certificate. (1) In addition to paying the fee under s. 440.05 (6), Stats., an applicant for a professional counselor training certificate shall submit the completed, signed application form and the materials required under **s.** MPSW 11.01 (1) (a), (b), (e) and ***(f).*** The applicant shall also cause the applicant's employer to confirm in writing directly to the section that the applicant is employed full–time, or has an offer of full–time employment, in supervised professional counseling practice which meets the requirements of ch. MPSW 12. The application is not complete until the confirmation from the applicant's employer is received by the section.

(2) A profcssional counselor training certificate shall be valid during a period of supervised pre–certification practice. The training certificate shall expire after 24 months, or when the applicant obtains certification under **s.** 457.12, Stats., or at the end of the supervised practice, whichever occurs first. A professional counselor training certificate may not be renewed.

History: Cr. Register, **January,** 1995. No. 469, eff. 2–1–95; CR 01–027: rn. **to** be (1), cr. (2), Register December 2001 No. **552,** eff. 1–1-02.

MPSW 11.02 Examination required. An applicant for licensure as a professional counselor shall pass both parts of the examination required under **s.** 457.12 (4), Stats., consisting of the Wisconsin statutes and rules examination and either the national counselor examination or the certified rehabilitation counselor examination. Both parts of the examination may be taken prior to the completion of the required period of supervised practice.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; **CR 02–105: am. Register October 2002 Nu. 562, eff. 11–1–02.**

MPSW 11.035 Temporary license. The professional counselor section may issue a temporary license permitting an individual who pays the fee under s. 440.05 (6), Stats., and who meets all the qualifications for the license except for passing the required examination to use the title "professional counselor" and to practice professional counseling. The temporary license expires 9 months after its issuance or upon notification of failure of passing the required examination under **s.** 457.12 (4), Stats., whichever occurs earlier. The temporary license may not be renewed.

History: Cr. Register, October, 1998, No 514, eff. 11–1–98; **CR 02–105: am. Register October 2002 No. 562, eff. 11–1-02.**

MPSW 11.04 Reciprocal license. The professional counselor section shall grant a license as a professional counselor under s. 457.12, Stats., to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

(1) The applicant has a current credential as a professional counselor or the substantial equivalent in good standing in another state or territory of the United States.

(2) The requirements for the grant of the credential in the other state or territory of the United States are substantially equivalent to the requirements for the grant of a license under **s.** 457.12, Stats.

(3) The applicant has disclosed all discipline ever taken or currently pending against the applicant or any professional credential held by the applicant by any credentialing authority of any state or territory of the United States.

(4) If the applicant has been convicted of a crime, or of a traffic offense which did or could result in the suspension or revocation of his or her driver's license. or the applicant has such charges pending against him or her, the applicant has disclosed all information necessary for the section to determine whether the circumstances of the pending charge or conviction are substantially

related to the duties of practice under a professional counselor license.

(5) The applicant passes an examination approved by the professional counselor section that tests knowledge of state law relating to professional counseling.

History: Cr. Register. November, 1994, No. 467, eff 12–1–94; **CR 02–105: am. (intro.), (2) and** (4), **cr. (5), Register October 2002 No. 562, eff. 11–1-02.**

Chapter MPSW 12

PROFESSIONAL COUNSELOR SUPERVISED PRACTICE

Note: Chapter SFC 12 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 12 was renumbered ch. MPSW 12 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 12.01 Supervised practice requirement. An applicant for licensure as a professional counselor under s. 457.12, Stats., shall complete a period of supervised practice to become eligible for the license. Supervision of the practice of professional counseling undertaken to meet the pre–licensure requirement may be exercised by a person other than an employment supervisor. The supervisor may exercise discretion as to the frequency, duration, and intensity of the supervision sessions to meet an average of one hour of supervision per week during the supervised practice period.

(1) An applicant who has received a master's degree shall complete at least 3,000 hours of professional counseling practice in no less than 2 years, including at least 1,000 hours of face–to–face client contact, under the supervision of a person specified in **s.** MPSW 12.02 (2) before the applicant is eligible for a license as a professional counselor.

(2) An applicant who has received a doctoral degree shall complete, either during or after completion of the doctoral degree program, at least 1,000 hours of professional counseling practice, under the supervision of a person specified in **s.** MPSW 12.02 (2) before the applicant is eligible for a license as a professional counselor.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93, am. (1) (intro.), Register, November, 1994, No. 467, eff. 12–1–94; **CR 02–105: r. and recr. Register October 2002 No. 562, eff. 11–1–02.**

MPSW 12.02 Qualifications of practice supervisor. **(1)** A person who supervises the practice of professional counseling shall have adequate training, knowledge and skill to competently render any professional counseling service that a supervisee undertakes. The supervisor may not permit a supervisee to engage in any professional counseling practice that the supervisor cannot competently perform. All supervisors shall be legally and ethically responsible for the supervised activities of the professional counselor supervisee. Supervisors shall be available or make appropriate provision for emergency consultation and intervention. Supervisors shall be able to interrupt or stop the supervisee from practicing in given cases, or recommend to the supervisee's employer that the employer interrupt or stop the supervisee from practicing in given cases, and to terminate the supervised relationship if necessary.

(2) Supervision of a period of supervised practice of professional counseling may be exercised by any of the following:

(a) An individual licensed as a professional counselor who has received a doctorate degree in professional counseling.

(b) An individual licensed as a professional counselor who has engaged in the equivalent of 5 years of full–time professional counseling.

(c) **A** psychiatrist or a psychologist licensed under ch. 455, Stats.

(d) A person employed by the division of vocational rehabilitation as a civil service vocational rehabilitation supervisor, level *3,* who is licensed as a professional counselor or who has engaged in the equivalent of *5* years of full–time professional counseling.

(e) An individual, other than an individual specified in pars. (a) to (d), who is approved in advance by the professional counselor section.

(3) It is the applicant's responsibility to satisfy the professional counselors section that the applicant's supervisor met all qualifications.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 01–026: am. (2), r. (2) (b) and (d), Register December 2001 No. 5.52, **eff.** 1–1–02; **CR 02–105: r. and recr. (2) Register October 2002 No. 562, eff. 11–1–02.**

MPSW 12.03 Pre–licensure supervised practice outcome requirement. As a condition of successful completion of a period of supervised practice, the candidate for licensure shall demonstrate competence to his or her practice supervisor in each of the following areas: counseling principles and techniques; case management; client assessment; ethics; and professional and community interaction. The candidate for certification shall also demonstrate competence to his or her practice supervisor in at least 3 of the following 7 areas: coordination and supervision of services; individual and group and family, or individual and group or family counseling techniques; assessment planning, administration and interpretation; service delivery systems and referral; counseling plan development; legal testimony; and consultation.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; **CR 02–105: am. Register October 2002 No. 562, eff. 11–1–02.**

MPSW 12.04 Limitations on group supervision. **(1)** If supervision is provided in group sessions, the group shall consist of no more than 6 persons receiving supervision for every one person providing supervision.

(2) If supervision is provided in group sessions, each person receiving supervision as part of the group session receives one hour credit for each hour that the group meets for supervision, but may not credit any time which is primarily social activity with the group or supervisor as part of a supervision session.

(3) A supervision session for a group or individual which is provided by more than one supervisor may not be credited for more than the actual time elapsed during the supervision session, not including social activities.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93.

Chapter MPSW 13

PRACTICE OF PSYCHOTHERAPY BY PROFESSIONAL COUNSELORS

Note: Chapter SFC 13 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 13 was renumbered ch. *MPSW* 13 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 13.01 Psychotherapeutic counseling. (1) A licensed professional counselor may engage without supervision in psychotherapy or psychotherapeutic counseling only if hc or she is qualified to do so by education, training or experience.

(2) Qualification to engage without supervision in psychotherapy or psychotherapeutic counseling may be demonstrated by the following:

(a) Successful completion of the national counselor mental health certification examination (NCMHCE);

(bj At least 180 contact hours of postgraduate training in psychotherapy modalities; and

(c) An affidavit by a supervisor qualified and authorized to practice psychotherapy that the individual has completed at least 3,000 hours of supervised clinical professional counselor practice in not less than 2 years, including at least 1,000 hours of face–to–face client contact and including DSM diagnosis and treatment of individuals.

Note: A licensed professional counselor employed in a certified outpatient mental health clinic is subject to rules of the department of health and family services regarding supervision.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 01–026: am. (1) (intro.) and (a) 2. to 4., Register December 2001 No. 552, eff. 1–1–02; **CR 02–105: r. and recr. Register October 2002 No. 562, eff. 11–1–02.**

Chapter MPSW 14

CONTINUING EDUCATION FOR PROFESSIONAL COUNSELORS AND EQUIVALENCY OF PROFESSIONAL COUNSELOR ACADEMIC PROGRAMS

Note: Chapter SFC 14 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 14 was renumbered ch. MPSW 14 under s. 13.93(2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 14.01 Academic program equivalent to a master's degree in professional counseling. An academic program is the equivalent of a master's degree in professional counseling from an approved institution if the completed program meets the following criteria:

(1) The course work was completed at an institution which was accredited by its regional accrediting association at the time the applicant graduated from the program, and was part of a program of studies leading to a master's degree or doctoral degree in a field closely related to professional counseling.

(2) The course work included successful completion of at least 3 semester hours or 4 quarter hours academic credit in a supervised counseling practicum; at least 3 semester hours or 4 quarter hours academic credit in a counseling theory course; and at least one coursc of at least 3 semester hours or 4 quarter hours academic credit in at least 6 of the following 8 topic areas; and the course work included a total of at least 42 semester hours or 63 quarter hours of academic credit in counseling related courses distributed among at least 6 of the following 8 topic areas:

(a) Human growth and development -– studies that provide a broad understanding of the nature and needs of individuals at all developmental levels, normal and abnormal human behavior, personality theory, and learning theory within appropriate cultural contexts.

(b) Social and cultural foundations — studies that provide a broad understanding of societal changes and trends, human roles, societal subgroups, social mores and interaction patterns, and differing lifestyles.

(c) The helping relationship — studies that provide a broad understanding of philosophic bases of helping processes, counseling theories and their applications. basic and advanced helping skills, consultation theories and their applications, client and helper self-understanding and self- development, and facilitation of client or consultee changes.

(d) Group dynamics processing and counseling — studies that provide a broad understanding of group development, dynamics, and counseling theories, group leadership styles, basic and advanced group counseling methods and skills, and other group approaches.

(e) Lifestyle and career development — studies that provide a broad understanding of career development theories; occupational and educational information sources and systems; career and leisure counseling, guidance and education; lifestyle and career decision making; career development program planning and resources; and effectiveness evaluation.

(f) Appraisal of individuals — studies that provide a broad understanding of group and individual educational and psychometric theories and approaches to appraisal, data and information gathering methods, validity and reliability, psychometric statistics, factors influencing appraisals, and use of appraisals results in helping processes.

(g) Research and evaluation — studies that provide a broad understanding of types of research, basic statistics, research report development, research implementation, program evaluation, needs assessment, publication of research information, and ethical and legal considerations.

(h) Professional counseling orientation — studies that provide a broad understanding of professional roles and functions, professional goals and objectives, professional organizations and associations, professional history and trends, ethical and legal standards, professional preparation standards, and professional credentialing.

(3) For purposes of this section, one academic quarter credit is equivalent to two-thirds of one academic semester credit.

(4) To reach course equivalency, an applicant may take up to 12 credit hours of courses, which may include a supervised counseling practicum, outside of his or her master's program.

History: Cr. Register. November, 1993, No. 455. eff. 12–1–93; am. (2) (intro.), Register, October, 1998, No. 514, eff. 11–1–98; am. (2) (intro.), Register, November, 1999, No. 527, eff. 12–1–99; CR 01–026: cr. (4), Register December 2001 No. 552, eff. 1–1–02.

MPSW 14.02 Academic program equivalent to a doctorate in professional counseling. An academic program is the equivalent of a doctoral degree in professional counseling from an approved institution if the completed program meets the following criteria:

(1) The course work was completed at an institution which was accredited by its regional accrediting association at the time the applicant graduated from the program, and was part of a program of shtdies leading to a doctoral degree in a field closely related to professional counseling.

(2) The course work included successful completion of at least 3 semester hours or 4 quarter hours academic credit in a supervised counseling practicum; at least 3 semester hours or 4 quarter hours academic credit in a counseling theory course; and at least one course of at least 3 semester hours or 4 quarter hours academic credit in each of the 8 topic areas defined in s. MPSW 14.01 (2); and the course work included at least 48 semester hours or 72 quarter hours of academic credit distributed among those 8 counseling related topic areas.

(3) For purposes of this section, one academic quarter credit is equivalent to two-thirds of one academic semester credit.

History: Cr. Register, November. 1993, No. 455, eff. 12–1–93; am. (2), Register, October, 1998, No. 514, eff. 11–1–98; am. (2), Register, November, 1999, No. 527, eff. 12–1–99.

MPSW 14.03 Continuing education requirements for license renewal. (1) Unless granted a postponement or waiver of the continuing education requirement, every licensed professional counselor is required to complete at least 30 continuing education credit hours in approved continuing education programs during each 2 year licensure period. This requirement will apply for the first time to the 2 year period beginning July 1.2003.

(2) Unless granted a postponement or waiver of the continuing education requirement, a licensee who fails to meet continuing education requirements by the renewal deadline must discontinue the use of the title "professional counselor" and must cease the practice of professional counseling until he or she completes the continuing education requirement.

(3) During the time between initial licensure and commencement of a full 2 year certification period, a new license holder is not required to meet continuing education requirements for the first renewal of his or her license.

(4) Applicants for licensure by reciprocity shall submit proof of completion of at least 30 continuing education hours substantially meeting the requirements of this chapter within the **2** year period prior to application.

(5) Continuing education hours may apply only to the 2 year license period in which the credit hours are acquired, unless either of the following applies:

(a) Continuing education hours required as a consequence of a disciplinary proceeding may not be counted towards the fulfillment of generally applicable continuing education requirements.

(b) If the licensee fails to meet the continuing education require the renewal date to satisfy the requirement of the preceding period will not apply to the period in which they are earned.

(6) To obtain credit for completion of continuing education programs, a professional counselor shall certify on his or her application for renewal of license that he or she has completed all continuing education credits as required in this scction for the previous 2 year license period. **A** licensee shall retain for a minimum period of 4 years, and shall make available to the board or its agent upon request, certificates of attendance issued by the program sponsor for all continuing education programs for which he or she claims credit for purposes of renewal of his or her license.

(7) **A** licensee may apply to the section for a postponement or waiver of the requirements of this chapter on grounds of prolonged illness, disability, or other grounds constituting extreme hardship. The section shall consider each application individually on its merits, and the section may grant a postponement, partial waiver or total waiver as deemed appropriate in the circumstances.

(8) The section may grant an exemption from the requirements of this chapter to a licensee who certifies to the section that he or she has permanently retired and no longer uses the title "professional counselor" and no longer practices professional counseling. **A** licensee who has been granted an exemption from the requirements of this chapter based on retirement may not return to the active practice of professional counseling or use the title "professional counselor" without submitting evidence satisfactory to the section that he or she completed at least 30 continuing education hours for each of the biennia during which the licensee was granted an exemption.

(9) The section may conduct audits or investigations, including random audits, to determine compliance by licensees with this chapter.

History: CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.

MPSW 14.04 Approved Continuing education programs. The following continuing education programs and other educational activities are approved as continuing education programs under this chapter:

(1) Any continuing education program approved, sponsored or provided by the national rehabilitation counselor association (NRCA), the American rehabilitation counselor association (ARCA), or the Wisconsin rehabilitation counselor association (WRCA).

(2) Any continuing education program sponsored by the national board for certified counselors (NBCC) or by a provider approved by NBCC.

(3) Any continuing education program approved, sponsored or provided by the American counselor association (ACA) or the Wisconsin counselor association (WCA).

(4) Any continuing education program approved by the commission on rehabilitation counselor certification (CBCC).

(5) Any continuing education program offered by a college or university accredited by the commission for accreditation of counseling and related educational programs (CACREP).

History: CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.

Chapter MPSW 15

DEFINITIONS FOR PRACTICE OF MARRIAGE AND FAMILY THERAPY

Note: Chapter SFC 15 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 15 was renumbered ch. MPSW 15 under s. 13.93 (2m) (b) 1., Stilts., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 15.01 Definitions. As used in chs. MPSW 15 to 19:

(1) "Accredited" means accredited by the commission on accreditation for marriage and family therapy education of the American association for marriage and family therapy.

(2) "Regionally accredited college or university" means a college or university which is accredited by any of the following bodies: the New England association of schools and colleges, the middle states association of colleges and schools, the higher learning commission, the northwest association of schools and colleges, the southern association of colleges and schools, the western association of schools and colleges.

(3) "Supervision" means supervision of the professional practice of marriage and family therapy in the applied skills of the profession.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 02–105: am. (intro.) and (2), Register October 2002 No. 562, eff. 11–1–02.

MPSW 15.02 Practice of marriage and family therapy. A licensed marriage and family therapist may practice marriage and family therapy as defined in s. 457.01, Stats., without supervision.

Note: A licensed mamage and family therapist employed in a certified outpatient mental health clinic is subject to rules of the department of health and family services regarding supervision.

History: CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.

Chapter MPSW 16

REQUIREMENTS FOR MARRIAGE AND FAMILY THERAPY LICENSURE

Note: Chapter SFC 16 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 16 was renumbered ch. MPSW 16 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 16.01 Application for licensure as a marriage and family therapist. (1) In addition to paying the fee specified in **s.** 440.08 (2) (a), Stats., an applicant for licensure as a marriage and family therapist shall submit the completed, signed application form and

(a) 1. A certificate of professional education, signed and sealed by the chancellor, dean or registrar of the regionally accredited college or university or other accredited institution from which the applicant has graduated with a master's or doctoral degree in marriage and family therapy.

2. An applicant who does not have a master's‘or doctoral degree in marriage and family therapy must present a certificate of professional education signed and sealed by the chancellor, dean or registrar of the school from which the applicant has graduated with a master's or doctoral degree in a field substantially equivalent to marriage and family therapy, together with satisfactory evidence of having completed education equivalent to a master's or doctoral dcgrce in marriage and family therapy pursuant to s. MPSW 16.02.

3. *An* applicant who has a master's or doctoral degree in marriage and family therapy from a program which was not accredited by the commission on accreditation for marriage and family therapy education (COAMFTE) of the American association for marriage and family therapy must submit satisfactory evidence of having completed education equivalent to a master's or doctoral degree in marriage and family therapy from a program accredited by the commission on accreditation for marriage and family therapy education of the American association for marriage and family therapy, pursuant to **s.** MPSW 16.02.

(b) An affidavit that the applicant has completed at least 3000 hours of marriage and family therapy practice in no less than 2 years, including at least 1000 hours of face-&-face client contact, under the supervision of a supervisor pursuant to s. MPSW 16.05.

(c) verification of successful completion of the examination required under **s.** 457.10 (4), Stats.

(d) Verification of the applicant's credential in all jurisdictions in which the applicant has ever been credentialed.

(e) All pertinent information relating to any convictions or pending charges for all crimes, and any traffic offenses which did or could result in revocation or suspension of the applicant's driver's license.

(2) Individuals who, after review of appropriate training and experience, have been admitted to clinical membership in the American association for marriage and family therapy will he considered for certification on the section's review of documentation of the individual's clinical membership submitted directly to the section from AAMFT. Those applicants shall also submit the fee specified in s. 440.08 (2) (a), Stats., with the completed, signed application form and:

(a) An affidavit that the applicant has completed at least 3000 hours of marriage and family therapy practice in no less than 2 years, including at least 1000 hours of face–to–face client contact, under the supervision of a supervisor pursuant to s. MPSW 16.05.

(b) Verification of successful completion of the examination required under s. 457.10 (4), Stats.

(c) Verification of the applicant's credential in all jurisdictions in which the applicant has ever been credentialed.

(d) All pertinent information relating to any convictions or pending charges for all crimes, and any traffic offenses which did or could result in revocation or suspension of the applicant's driver's license.

History: Cr. Register, November, 1993, No. **455**, eff. 12–1–93; **am. (1) (c)** and (2), r. (3), Register, November, 1999. No. 527, eff. 12–1–99; **CR 02–105: am. (1) (intro.), (1) (a) 3., (1) (b) and (d) and (2) (a) and (c), Register October 2002 No. 562, eff. 11–1–02.**

MPSW 16.02 Educational equivalents for graduate degrees in marriage and family therapy from accredited institutions. For purposes of meeting the educational requirements for a certificate as a marriage and family therapist, the following are substantially equivalent to a master's or doctoral degree in marriage and family therapy from an accredited institution:

(1) A course of study that includes at least 9 separate courses in the general topic areas of marital and family studies, marital and family therapy, and human development during the completion of a master's or doctoral degree at a regionally accredited college or university, as follows:

Note: There is a depth requirement in the educational equivalency evaluation. Each applicant is required *to* have a minimum **of2** courses in each of the general topic areas of marital and family studies. marital and family therapy, and human development. Each applicant is also required to have a minimum of 3 additional courses **chosen** from one or more of those topic areas, for a total of 9 separate courses in the topic areas of marital and family studies, marital and family therapy, and human development.

(a) Marital and family studies; a minimum of 2 separate courses and 6 semester hours or 8 quarter hours of academic credit. The courses shall relate directly to family development and family interactional patterns across the life cycle of the family as well as the family. Course work shall include one or more of the following areas: the study of family life cycle; theories of family development; marriage and the family; sociology of the family; families under stress; the contemporary family; the family in a social context; the cross–cultural family; youth, adult, aging and the family; family subsystems; and individual, interpersonal relationships involving marital, parental, and sibling relations.

(b) Marital and family therapy; a minimum of **2** separate courses and 6 semester hours or 8 quarter hours of academic credit. The course work shall include one or more of the following areas: the study of family therapy methodology; family assessment; treatment and intervention methods in family or marital therapy; overview of major clinical theories of marital and family therapy such as: communications, contextual, experiential, object relations, strategic, structural, systemic, transgenerational.

(c) Human development; a minimum of 2 separate courses and 6 semester hours or 8 quarter hours of academic credit. The course work shall include one or more of the following areas: the study of human development; personality theory; human sexuality; psychopathology; and behavior–pathology.

(d) Professional studies; a minimum of 1 course and 3 semester hours or 4 quarter hours of academic credit. The course work shall include one or more of the following areas: the study of professional socialization and the role of the professional organization; legal responsibilities and liabilities; independent practice and interprofessional cooperation; ethics; and family law.

(e) Research; a minimum of 1 course and 3 semester hours or 4 quarter hours of academic credit. The course work shall include one or more of the following areas: research design; methods and statistics; and research in marital and family studies and therapy.

(f) Clinical practicum; clinical practice as part of an academic program in marriage and family therapy or a substantially equivalent field, including at least 300 hours in face–to–face contact with individuals, couples, and families for the purpose of assessment, diagnosis, and treatment, accumulated under supervision in not less than 8 calendar months and not more than 24 calendar months.

Note: The clinical practice required in an academic program in order to meet the educational equivalency of a master's or doctoral degree in marriage and family therapy shall not be considered to fulfill any part of the postgraduate supervised practice requirement for licensure eligibility. A person who is working towards the equivalent of a graduate degree in marriage and family therapy shall complete the 300 hours of supervised practice as part of the academic equivalency, and shall also complete the 3,000 hours of postgraduate supervised practice required of all applicants for a license as a marriage and family therapist.

(2) Proof that the applicant has, after obtaining a master's or doctoral degree in a field substantially equivalent to marriage and family therapy, successfully completed and rcccived academic credit for course work at an accredited institution or a regionally accredited college or university, which, when combined with course work supporting the master's or doctoral degree in the substantially equivalent field, meets the criteria stated in sub. (1).

(3) Proof that the applicant has been admitted to clinical membership in the American association for marriage and family therapy after review of appropriate training and experience may be considered as the equivalent of a graduate degree in marriage and family therapy from an accredited institution on the marriage and family therapists section's review of documentation of the applicant's clinical membership in the American association for marriage and family therapy. The applicant shall request the American association for marriage and family therapy to send documentation of the applicant's clinical membership in the American association for marriage and family therapy and the date the membership was granted directly to the marriage and family therapists section from the American association of marriage and family therapy.

History: Cr. Register, November, 1993, No. **455,** eff. 12–1–93; r. (4), Register, November, 1999, No. 527, eff. 12–1–99.

MPSW 16.03 Supervised clinical practice. The person whose practice is being supervised shall receive a minimum of one hour of face–to–face supervision for each 10 hours of supervised practice. Practice of marriage and family therapy which occurs as part of the requirements for obtaining a master's or doctoral degree in marriage and family therapy or a substantially related field shall not be considered to fulfill any part of the postgraduate supervised practice requirement.

History: Cr. Register, November. 1993,No. 455, eff. 12–1–93; CR 01–151: **am.** Register July 2002 No. 559. eff. 8–1–02; CR **02–105: am.** Register October **2002** No. **562, eff. 11–1–02.**

SFC 16.04 Supervised practice requirement for psychotherapy. History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; **CR 02–105: r.** Register October **2002 No. 562, eff. 11–1–02.**

MPSW 16.05 Qualifications of a person providing practice supervision. (1) Supervision of a period of supervised practice of marriage and family therapy may be exercised by either:

(a) An individual licensed as a marriage and family therapist who has received a doctorate degree in marriage and family therapy.

(b) An individual licensed as a marriage and family therapist who has engaged in the equivalent of 5 years of full–time marriage and family therapy practice.

(c) A psychiatrist or a psychologist licensed under ch. 455, Stats.

(d) A person who holds an "approved supervisor" certificate from the American association for marriage and family therapy.

(e) **An** individual, other than an individual specified in **par.** (a), (b), (c) or (d), who is approved in advance by the marriage and family therapist section.

(2) Supervision of required postgraduate clinical practice shall be conducted by a supervisor with adequate training, knowledge and skill to competently supervise any marriage and family therapy service that a marriage and family therapist undertakes. The supervision of the practice of marriage and family therapy may be exercised by a person other than an employment supervisor. The supervisor may not permit a supervisee to engage in any marriage and family therapy practice that the supervisor cannot competently supervise. All supervisors shall be legally and ethically responsible for the activities of the marriage and family therapist supervisee. Supervisors shall be available or make appropriate provision for emergency consultation and intervention. Supervisors shall be able to interrupt or stop the supervisee from practicing in given cases: or recommend to the supervisee's employer that the employer interrupt or stop the supervisee from practicing in given cases, and to terminate the supervised relationship if necessary.

(3) It is the applicant's responsibility to satisfy the marriage and family therapists section that the applicant's supervisor met all qualifications.

History: Cr. Register, November, 1993. No. 455, eff. 12–1–93; **CR 02–105: r. and** recr. Register October **2002** No. **562,** eff. **11–1–02.**

MPSW 16.06 Limitations on group supervision. (1) If supervision is provided in group sessions, the group shall consist of no more than 6 persons receiving supervision for every one person providing supervision.

(2) If supervision is provided in group sessions, each person receiving supervision as part of the group session receives one hour credit for each hour that the group meets for supervision, but may not credit any time which is primarily social activity with the group or supervisor as part of a supervision session.

(3) A supervision session for a group or individual which is provided by more than one supervisor may not be credited for more than the actual time elapsed during the supervision session, not including social activities.

History: Cr. Register. November, 1993,No. 455, eff. 12–1–93.

Chapter MPSW 17

MARRIAGE AND FAMILY THERAPY TEMPORARY LICENSE, RECIPROCAL LICENSE, AND TRAINING CERTIFICATE APPLICATIONS

Note: Chapter SFC 17 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 17 was renumbered ch. MPSW 17 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 17.01 Temporary license. The marriage and family therapist section may issue a temporary license permitting a person who has completed the educational and supervised practice requirements for eligibility for a license as a marriage and family therapist upon payment of the fee for the temporary license and application for the next available examination to use the title "marriage and family therapist" and to practice marriage and family therapy. The temporary license is valid for a period not to exceed 9 months from the date of its issuance, or the date on which examination scores are released, whichever occurs sooner. The marriage and family therapists section may grant one renewal of the temporary license in cases of hardship, for a period not to exceed 9 months or the date of the release of scores from the next available examination after the date of renewal of the temporary license, whichever occurs sooner. A person who fails the licensure examination shall immediately return the temporary license to the marriage and family therapists section. The marriage and family therapists section may not grant or renew a temporary license to an applicant who has failed the licensure examination.
History: Cr. Register, November, 1993, No. **455,** eff. 12–1–93; **CR 02–105: am. Register October 2002 No. 562, eff. 11–1–02.**

MPSW 17.02 Reciprocal license. The marriage and family therapist section shall grant a license as a marriage and family therapist under s. 457.10, Stats., to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

(1) The applicant has a current credential as a marriage and family therapist or the substantial equivalent in good standing in another state or territory of the United States.

(2) The requirements for the grant of the credential in the other state or territory of the United States are substantially equivalent to the requirements for the grant of a license under s. 457.10, Stats.

(3) The applicant has disclosed all discipline ever taken or currently pending against the applicant or any professional credential held by the applicant by any credentialing authority of any state or territory of the United States.

(4) If the applicant has been convicted of a crime, or of a traffic offense which did or could result in the suspension or revocation of his or her driver's license, or the applicant has such charges pending against him or her, the applicant has disclosed all information necessary for the section to determine whether the circumstances of the pending charge or conviction are substantially related to the duties of practice under a marriage and family therapist license.

(5) The applicant passes an examination approved by the marriage and family therapist section that tests knowledge of state law relating to marriage and family therapy.
History: Cr. Register, November. **1994,** No. 467, eff. 12–1–94; **CR 02–105: am. (intro.) (2) and** (4), **cr. (5), Register October 2002 No. 562, eff. 11–1–02.**

MPSW 17.03 Training certificate. The marriage and family therapist section shall grant a marriage and family therapist training certificate to any individual who does all of the following:

(a) Submits a completed, signed application form

(b) Pays the fee specified in s. 440.05 (6), Stats.

(c) Satisfies the requirements in s. 457.10 (2), Stats.

(d) Submits evidence satisfactory to the marriage and family therapist section that he or she is employed full–time, or has an offer of full–time employment, as a marriage and family therapist in a supervised marriage and family therapist practice or in a position in which the applicant will, in the opinion of the marriage and family therapist section, receive training and supervision equivalent to the training and supervision received in a full–time supervised marriage and family therapist practice.

(2) A marriage and family therapist training certificate is valid for 24 months or until the date on which the holder of the certificate ceases to be employed in a position specified in sub. (1) (d), whichever occurs first, and may not be renewed by the marriage and family therapist section. A marriage and family therapist training certificate authorizes the holder to use any title specified in s. 457.04 (5), Stats., and to practice marriage and family therapy within the scope of his or her training or supervision during the period in which the certificate is valid.
History: **CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.**

Chapter MPSW 18

MARRIAGE AND FAMILY THERAPY EXAMINATIONS

Note: Chapter SFC I8 was created as an emergency rule effective April 26, 1993.
Note: Chapter SFC 18 was renumbered ch. MPSW 18 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 18.01 Examination. An applicant for a license as a marriage and family therapist shall successfully complete the examination consisting of the Wisconsin statutes and rules examination and the examination in marriage and family therapy of the association of marital and family therapy regulatory boards. Both parts of the examination may be taken prior to the completion of the required period of supervision.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; **am.** Register, November, 1999, No. 527, eff. 12–1–99; **CR 02–105: am. Register October 2002 No. 562, eff. 11–1–02.**

Chapter MPSW 19

CONTINUING EDUCATION

Note: Chapter SFC 19 was renumbered ch. MPSW 19 under s. 13.93(2m) (b) 1., Stats., and corrections made under s. 13.93(2m) (b) 7., Stats., Register October 2002 No. 562.

MPSW 19.01 Continuing education requirements for license renewal. (1) Unless granted a postponement or waiver of the continuing education requirement, every licensed marriage and family therapist is required to complete at least 30 continuing education credit hours in approved continuing education programs during each 2 year licensure period. This requirement will apply for the first time to the 2 year period beginning July 1, 2003.

(2) Unless granted a postponement or waiver of the continuing education requirement, a licensee who fails to meet continuing education requirements by the renewal deadline must discontinue the use of the title "marriage and family therapist" and must cease the practice of marriage and family therapy until he or she completes the continuing education requirement,

(3) During the time between initial licensure and commencement of a full 2 year certification period, a new license holder is not required to meet continuing education requirements for the first renewal of his or her license.

(4) Applicants for licensure by reciprocity shall submit proof of completion of at least 30 continuing education hours substantially meeting the requirements of this chapter within the 2 year period prior to application.

(5) Continuing education hours may apply only to the 2 year license period in which the credit hours are acquired, unless either of the following applies:

(a) Continuing education hours required as a consequence of a disciplinary proceeding may not be counted towards the fulfillment of generally applicable continuing education requirements.

(b) If the licensee fails to meet the continuing education requirement during a 2 year license period, any additional continuing education hours obtained on or after the renewal date to satisfy the requirement of the preceding period will not apply to the period in which they are earned.

(6) To obtain credit for completion of continuing education programs, a marriage and family therapist shall certify on his or her application for renewal of license that he or she has completed all continuing education credits as required in this section for the previous 2 year license period. A licensee shall retain for a minimum period of 4 years, and shall make available to the board or its agent upon request, certificates of attendance issued by the program sponsor for all Continuing education programs for which he or she claims credit for purposes of renewal of his or her license.

(7) A licensee may apply *to* the section for a postponement or waiver of the requirements of this chapter on grounds of prolonged illness, disability, or other grounds constituting extreme hardship. The section shall consider each application individually on its merits, and the section may grant a postponement, partial waiver or total waiver as deemed appropriate in the circumstances.

(8) The section may grant an exemption from the requirements of this chapter to a licensee who certifies to the section that he or she has permanently retired and no longer uses the title "marriage and family therapist" and no longer practices marriage and family therapy. A licensee who has been granted an exemption from the requirements of this chapter based on retirement may not return to the active practice of marriage and family therapy or use the title "marriage and family therapist" without submitting evidence satisfactory to the section that he or she completed at least 30 continuing education hours for each of the biennia during which the licensee was granted an exemption.

(9) The section may conduct audits or investigations, including random audits, to determine compliance by licensees with this chapter.

History: CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.

MPSW 19.02 Approved continuing education programs. The following continuing education programs and other educational activities are approved as continuing education programs under this chapter:

(1) Any continuing education program sponsored by the American association for marriage and family therapy (AAMFT).

(2) Any continuing education program approved, sponsored or authorized by the Wisconsin association for marriage and family therapy (WAMFT).

(3) Any continuing education program or course offered by a training program accredited by the commission on accreditation for marriage and family therapy education (COAMFTE).

(4) Any course or continuing education program offered by an accredited college or university.

History: CR 02–105: cr. Register October 2002 No. 562, eff. 11–1–02.

Chapter MPSW 20

CONDUCT

Note: Chapter **SFC** 20 **was** created **as** an emergency rule effective April 26, 1993.
Note: Chapter SFC 20 was renumbered ch. MPSW 20 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register *October* 2002 No. 562.

MPSW 20.01 Definition. "Gross negligence" in the practice of social work, or marriage and family therapy, or professional counseling means the performance of professional services that does not comply with an accepted standard of practice that has a significant relationship to the protection of the health, safety or welfare of a patient, client, or the public, and that is performed in a manner indicating that the person performing the services knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93.

MPSW 20.02 Unprofessional conduct. Unprofessional conduct related to the practice under a credential issued under ch. 457, Stats., includes, but is not limited to, engaging in, attempting to engage in, or aiding or abetting the following conduct:

(1) Performing or offering to perform services for which the credential holder is not qualified by education, training or experience.

(2) Violating a law of any jurisdiction, the circumstances of which substantially relate to the practice under the credential.

(3) Undertaking or continuing performance of professional services after having been adjudged incompetent by any court of law.

(4) Using fraud or deception in the application for a credential.

(5) Using false, fraudulent, misleading or deceptive advertising, or maintaining a professional relationship with one engaging in such advertising.

(6) Engaging in false, fraudulent, deceptive or misleading billing practices.

(7) Reporting distorted, false, or misleading information or making false statements in practice.

(8) Discriminating on the basis of age, race, color, ***sex,*** religion, creed, national origin, ancestry, disability or sexual orientation by means of service provided or denied.

(9) Practicing or attempting to practice while the credential holder is impaired due to the utilization of alcohol or other drugs, or as a result of an illness which impairs the credential holder's ability to appropriately carry out the functions delineated under the credential in a manner consistent with the safety of a client, patient, or the public.

(10) Revealing facts, data, information, records or communication rceivcd from a client in a professional capacity, except in the following circumstances:

(a) With the informed consent of the client or the client's authorized representative;

(b) With notification to the client prior to the time the information was elicited of the use and distribution of the information; or

(c) If necessary to prevent injury to the client or another person;

(d) Pursuant to a lawful order of a court of law;

(e) Use of case history material for teaching, therapeutic or research purposes, or in textbooks or other literature, provided that proper precautions are taken to conceal the identity of the client; or

(f) When required pursuant to federal or state statute.

(11) Engaging in sexual contact, sexual conduct, or any other behavior with a client which could reasonably be construed as seductive. For purposes of this rule, a person shall continue to be a client for *2* years after the termination of professional services.

(12) Failing to provide the client or client's authorized repre-scntativc a description of what may be expected in the way of tests, consultation, reports, fees, billing, therapeutic regimen or schedule.

(13) Failing to avoid dual relationships or relationships that may impair the credentialed person's objectivity or create a conflict of interest. Dual relationships prohibited to credentialed persons include the credentialed person treating the credentialed person's employers, employees, supervisors, supervisees, close friends or relatives, and any other person with whom the credentialed person shares any important continuing relationship.

(14) Failing to conduct an assessment, evaluation, or diagnosis as a basis for treatment consultation.

(15) Employing or claiming to have available secret techniques or procedures that the credential holder refuses to divulge.

(16) In the conduct of research, failing to inform study participants of all features of the research that might reasonably be expected to influence willingness to participate; failure to ensure as soon as possible participants' understanding of the reasons and justification for methodological requirements of concealment or deception in the study; failure to protect participants from physical or mental discomfort, harm or danger, or to notify the participant of such danger; and failure to detect and remove any undesirable consequences to the participants resulting from research procedures.

(17) Failing to inform the client of financial interests which are not obvious and which might accrue to the Credential holder for referral to or for any use of service, product or publication.

(18) Failing to maintain adequate records relating to services provided a client in the course of a professional relationship.

(19) Violating any of the provisions of ch. 457, Stats.

(20) Failing to notify the board that a license, certificate or registration for the practice of any profession previously issued to the credential holder has been revoked, suspended, limited or denied, or subject to any other disciplinary action by the authorities of any jurisdiction.

(21) Failing to make reasonable efforts to notify a client or a client's authorized representative when professional services will be interrupted or terminated by the credential holder.

(22) Gross negligence in practice in a single instance, or negligence in practice in more than one instance.

(23) Having a license, registration, or certificate permitting the practice of marriage and family therapy, professional counseling, or social work, or authorizing the use of the title "marriage and family therapist," "professional counselor," "social worker", or similar terms revoked, suspended, limited, or subjected to any other discipline, by any other jurisdiction.

History: Cr. Register, November, 1993, No. 455, eff. 12–1–93; CR 01-026: am. (13), Register December 2001 No. 552. eff. 1–1–02; **CR 02–105: am. (intro.) (1), (4), (9), (15), (17), (20), (21) and (23), Register October 2002 No. 562, eff. 11–1–02.**

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2, Wis. Admin. Code and s. 227.01 (3) (h). Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.02 *Scope.* ***History:*** Cr. Register, October, 1985, No. 358, eff. 11–1–85; **r., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which a credentialing authority reviews a decision to deny a completed application for a credential.

(5) "Departnient" means the department of regulation and licensing.

(6) "Division" means the division of enforcement in the department.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; correction in (4) made under s. 13.93(2m) (b) 7., Stats., Register, May, 1988, No. 389; **am. (1), (4), r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.04 Examination failure: retake and hearing.

(1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination: but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr.. Register. July, 1996, No. 487, eff. 8–1–96.

RL 1.05 Request for hearing. **History:** Cr. Register, October, 1985, No. 358, eff. 11–1–85; corrections in (2) (a) and (h) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; **r. Register. July, 1996, No. 487, cff. 8–1–96.**

RL 1.05 Notice of intent to deny and notice of denial.

(1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days From the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL If the credentialing authority determines that an applicant does not meet the requirements for a credcntial, the credentialing authority shall issue a notice of denial in the form shown in Appendix 11. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

History: Cr., Register, July, 1996, eff. 8–1–96.

RL 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr. Register, October, 1985, No. 358, eff. **11–1–85; renum. from RL 1.04 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relics.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met, and the credentialing authority or its designee shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: Cr., Register, July, 1996, No. 487, eff. 8-1–96.

RL 1.09 Conduct of hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to 'appear in person or by counsel, to call, examine and cross–examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **renum. from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, 1985. No. 358. eff. 11–1–85; **renum. from RL 1.07 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

Chapter RL 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____

[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. **Box** 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S'] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON WHICH THE DENIAL WILL BE BASED]

_____

[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALTNC AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01 Authority. The rules inch. RL 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227. Stats.

History: Cr. Register, October. 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6-1-82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in **s.** 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in **s.** 227.01 (3) (a), Stats.

History: Cr. Register. October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6–1–82; corrections made under s. 13.93 (2m) (b) 7., Stats., Register. May, 1988, No. 389; am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.

(2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

(3) "Department" means the department of regulation and licensing.

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036, in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7), Register, May, 1982, No. 317, **eff.** 6–1–82; r. (1), renum. (2) to (4) to be (1) to (3). cr. (4) and (10), am. (5), (7) and (8), Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is **a** fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82; am. (intro.) and (3), Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register. June, 1992, No. 438, eff. 7-1 -92.

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82: renum. from RL 2.036 and am., Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register. February, 1979, No. 278, eff. 3–1–79; am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; am. (intro.), (3) and (4), Register, June, 1992. No. 438, eff. 7–1–92.

RL 2.07 Notice of hearing. (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall bc substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3–1–79; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. S01.14(2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2), Register, June, 1992, No. 438, eff 7–1–92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register. October, 1978, No. 274, eff. 11–1–78; am. (4), Register, February, 1979, No. 278, eff. 3–1–79; am. (1), (3) and (4), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; r. and recr. (1), Register, November, 1986, No. 371, eff. 12–1–86; correction in (2) made under s. 13.93 (2m)(b) 7., Stats.. Register, May, 1988, No. 389; am. Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplifica-

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register. June, 1992, No. 438, eff. 1992.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Rcgistcr. October, 1978, No. 274, eff. 11–1–78: am. Register, June, 1992, No, 438. eff. 7–1–92.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October. 1978. No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.15 Conduct of hearing. **(1)** PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07(5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) A presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department of regulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1), (S) and (6), cr. (8), Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78: am. Register, June. 1992, No. 438, eff. 7–1–92.

RL 2.17 Transcription fees. **(1)** The fee charged for a transcript of a proceeding under this chapter shall he computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; am. (1) Register, **May,** 1982, No. 317: eff. 6–1–82; r. and recr. Register, **June,** 1992, No. 438, eff. 7–1–92; am. (1) (b), Register, August, 1993, No. 452, eff. 9–1–93.

RL 2.18 Assessment of costs. **(1)** The proposed decision of an administrative law judge follow-ing hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within I5 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

Chapter RL 2
APPENDIX I
NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class **2** proceeding as defined in s. 227.01 (3) (b), Wis. Stats.

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in **s.** RL 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the bais of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. RL 2.10, who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P. O. Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date: (#6)
Time: (#7)
Location: Room(#8)
1400 East Washington Ave
Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in **s.** 227.44, Stats., **s.** (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____day of, _____20__

_____
Signature of Licensing Authority M[illegible] or A[illegible]
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01 Authority. The rules in ch. RL 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

History: Cr. Register, **July,** 1993, No. 451, eff. 8–1–93.

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr. Register, **July.** 1993, No. 451, eff. 8–1–93.

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of s. RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.04 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING" and shall be entitled: "IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

History: Cr Register, **July,** 1993, No. 451, eff. 8–1–93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, **July.** 1993, No. 451, eff. 8–1–93.

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix I and signed by an attorney in the division.

History: Cr. Register, **July.** 1993, No. 451, eff. 8–1–93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History: Cr. Register, **July,** 1993, No. 451, eff. 8–1–93.

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register. **July,** 1993, No. 451, eff. 8–1–93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. **An** administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such othcr matters as may aid in the disposition of the matter.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. **RL** 3.09.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) *How made.* An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting papers.* Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. **A** subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register. July, 1993, No. 451, eff. 8–1–93.

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin may be obtained from the Department **of** Administration, State Bureau of Procurement, 101 E. Wilson Street, 6th Floor, P.O. **Box** 7867, Madison, Wisconsin 53707–7867.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or othcr reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. 977, Stats.

History: Cr. Register. July, 1993, No. 451, eff. 8–1–93.

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULAITON AND LICENSING

IN THE MATTER OF A PETITION : NOTICE OF
FOR AN ADMINISTRATIVE; HEARING
INJUNCTION INVOLVING :

(#1),:
Respondent

NOTICE OF HEARING

TO: **(#2)**

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under **s.** 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.
The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office of Board Legal Services,
P.O. Box **8935,**
Madison, Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box **8935,**
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in **s.** 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in **ss.** 227.21, 440.44, **(#9)**, Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____ day of ~~20~~

(...#10...), Attorney

INSERTIONS
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; [illegible] **Register, July,** 1996, No. 487, **eff.** 8–1–96.

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(4) "Department" means the department of regulation and licensing.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register. October, 1978, No. 274, eff. 11–1–78; **renum. (1)** to (4) **to be** (4), **(3), (1). (5) and am. (5), er. (2) and** (6). **Register, July,** 1996, **No.** 487, **eff.** 8–1–96.

RL 4.03 Time for review and determination of credential applications. (1) TIME LIMITS. An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY. **A** delay by an authority in making a determination on an application within the time period specified in this section shall be reported to the permit information center under **s.** 227.116, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register, August, 1992, No. 440, eff. 9–1–92; **renum. from** RL 4.06 **and am., Register, July,** 1996, **No.** 487, eff. 8–1–96.

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE. **A** list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES. (a) Fees for examinations shall be established under **s.** 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application fonn shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under **s.** 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $10 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHER STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by **an** authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who are applying for a credential in another state arc equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October, 1978. No. 274, eff. 11–1–78; r. and recr. Register, May, 1986. No. 365, eff. 6–1–86; am. Register, December, 1986, No. 372, eff. 1–1–87; **am.** Register, September, 1987, No. 381. eff. 10–1–87; am. (3), Register, September, 1988, No. 393, eff. 10–1–88; am. (3), Register, September, 1990, No. 417, eff. 10–1–90; r. and recr. (1) to (3), cr. (4), renum. Figure and am. Register. April. 1992. No. 436, eff. 5–1–92; am. (4) Figure, cr. (5), Register, July, 1993, No. 451, eff. 8–1–93; r. and recr. Register, November, 1993, No. 455, eff. 12–1–93; **r. (2),** am. **(3) (a), (b), (c), (e), (4), (5), Register, July,** 1996, **No.** 487, **eff.** 8–1–96.

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is **$28.**

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, 1992. No. 436, eff. 5–1–92; am. **Register, July,** 1996. No. 487, eff. 8–1–96.

RL 4.06 Refunds. (1) A refund of all but $10 of the applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to be unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register. May, 1986, No. 365, eff. 6–1–86; am. (1) and (2) (intro.), renum. (2) (c) and (3) to be (3) and (4), cr. (5), Register, September, 1987, No. 381, eff. 10–1–87; r. and recr. (1) and (4). Register, April, 1992, No. 436. eff. 5–1–92; r. (2), renum. (3) to (5) to be (2) to (4), Register. July, 1993, No. 451, eff. 8–1–93; renum. from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8–1–96.

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01 Authority and intent. **(1)** This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets **s.** 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with **s.** 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. RL 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988. No. 389, eff. 6–1–88.

RL 6.04 Petition for summary suspension. **(1)** A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register. May, 1988, No. 389, **eff.** 6–1–88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last–known address of the respondent as indicated in the records of the licensing authority as provided in **s.** 440.1 1 (2), Stats. as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in **s.** 801.11, Stats.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.06 Issuance of summary suspension order. **(1)** If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under **s.** RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. RL 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988. No. 389, eff. 6-1-88.

RL 6.08 Service of summary suspension order. An order of suinmary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify? call, examine and cross-examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988. No. 389, eff. 6-1-88.

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summaiy suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr Register, May, 1988, No. 389, eff 6-1-88

RL 6.11 Delegation. (1) A board may by a two-thirds vote:

(a) Designate under s. **227.46** (1), Stats., a member of the board or an employe of thc department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL **6.09;** or

(b) Appoint a panel of no less than two-thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL **6.09.**

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL **6.09.**

(3) Except as provided in s. 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr Register, May, **1988, No. 389, eff 6-1-88**

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 15.30, 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; **am.** (2), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing board attached to the department and the real estate board.

(2) "Board liaison'' means the board member designated by the board as responsible for approving credential holders for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under **s.** RL 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who **is** a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the impaired professionals procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. Register, January. 1991, No. 421, eff. 2–1–91; am. (1), (2), (5). cr. (2a), (2b), r. (6), Register, July, 1996, No. 487, eff. 8–1–96; **cr. (6) and (8), Register, January, 2001, No. 541, eff. 2–1–01**.

RL 7.03 Referral to and eligibility for the procedure. (1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to **s.** RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with **an** application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the credential holder's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credentialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in **s.** RL 7.01 (2). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

(4) Prior to the signing of an agreement for participation the credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under **s.** RL 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The assessment shall include a statement describing the credential holder's prognosis for recovery. The board liaison and the credential holder may agree to waive this requirement.

(5) If a credential holder is determined to be ineligible for the procedure, the credential holder shall be referred to the division for prosecution.

(6) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; **am. (2)** to (6), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

(a) Sign an agreement for participation under s. RL 7.05.

(b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06.

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.

(e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. RL 7.11, as required.

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling, treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

(i) File quarterly reports documenting the credential holder's attendance at meetings of self–help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may request that the board dismiss the credential holder from the procedure. The board shall review the complete record in making this determination. If the credential holder is dismissed the matter shall be referred to the division.

(3) If a credential holder violates the agreement and the board does not dismiss and refer the credential holder to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

History: Cr. Register. **January,** 1991, No. 421. eff. 2–1–91; am. Register, July, 1996, No. 487, eff. 8–1–96: **am. (1) (e), Register, January, 2001, No.** 541, **eff. 2–1–01.**

RL 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

(a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL 2.

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. RL 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under s. RL 7.07 (3) (a) or violated terms of the agreement in s. RL 7.04 (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of conddentiality that all or certain records shall remain closed and not available for public inspection and copying.

History: Cr Register, **January,** 1991, No 421. eff. 2–1–91; am (1) **(a)** to (g) **and** (2), Register, July, 1996, No 487, eff 8-1 -96; **am.** (1) **(d), Register, January, 2001, No.** 541, **eff. 2–1–01.**

RL 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatment plans and protocols arc available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility, a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, **January,** 1991, No. 421, eff. 2–1–91: am. Register, July, 1996, No. 487, eff. 8–1–96; ***r. (1) (d) and (2) (d), renum. (1) (e) and (2) (e) to be*** (1) **(d) and (2) (d) and am., Register, January, 2001, No.** 541, eff. **2–1–01.**

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for detennination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who are dismissed for failure to meet the requirements of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public.

(b) Credential holders who apply and who are determined to be ineligible for the procedure where the board liaison is in possession of information indicating a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

History: Cr. Register, January, 1991, No. 421. **eff.** 2–1–91; am. (1), **(3)** (a) to (d), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.08 Records. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) **AVAILABILITY** OF PROCEDURE RECORDS **FOR** PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the proccdurc, the existence of any pledge of Confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under **s.** 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under s. 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CARE RECORDS. Patient health care records are confidential under s. 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

History: Cr. Register, January. 1991, No. 421. eff. 2–1–91; am. (2). Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; **am.** Register, July, 1996, No. 487. eff. 8–1–96.

RL 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

History: Cr. Register, January, 1991. No. 421, eff. **2–1–91**; **am.** Register, July, 1996. No. 487, eff. 8-1-96.

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credcntial holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting **up** an account, establishing a method of payment and supplying preprinted chain–of–custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational 24 hours per day, 7 days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available to the dcpartmcnt through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results arc released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportahon collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The rcquiremcnts for reporting of results arc:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e–mail or electronically transmit laboratory copies of drug test results at the request of the departmcnt.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain–of–custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, Nu. 541, eff. 2–1–01.

Chapter RL 7

APPENDIX I

CONSENT FOR RELEASE OF INFORMATION

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or persons designated by the board liaison who are directly involved in administration of the procedure, with (#3). I further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of information to the board liaison from those persons and institutions.

In the event of my dismissal from the Impaired Professionals Procedure, I hereby also authorize the board liaison or the hoard liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records, evidencing my failure to meet participation requirements.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (ii6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

Unless rcvokcd earlier, this consent is effective until (#7). I understand that J may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, I will be subject to dismissal from the procedure.

I understand that the recipient of infomiation provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of the information without niy specific written consent, or except as otherwise permitted or required by law.

Dated this _____ day of _____, 19___.

_____

Signature of IPP Participant Participant's Date of Birth

INSERTIONS

1. Participant

2. Persons and institutions provided with releases for provision of information to the department

3. Examples: Drug and alcohol treatment records
Mental health/psychiatric treatment records
Personnel records; work records
Results of blood or urine screens

4. Persons or institutions given authorization

5. Persons or institutions given authorization in the first paragraph

6. Name of board

7. Date to which consent is effective

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01 Authority and scope. Rules in this chapter are adopted under the authority of **s.** 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999. No. 517, eff. 2–1–99.

RL 8.02 Definitions. As used in **s.** 440.205, Stats., and in this chapter:

(1) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) "Division" means the division of enforcement in the department.

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credcntial holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continuedpractice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rulerelated to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.04 Issuance of an administrative warning. **(1)** An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credcntial holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder's name and address.

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under **s.** 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without fiirther action.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.07 Transcription fees. **(1)** The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

Chapter RL 8

APPENDIX I

DEPARTMENT OF REGULATION AND LICENSING

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority) to {credential holder) pursuant to s. 440.205, Stats. The (disciplinary authority) makes the following findings:

I) That there is evidence of professional misconduct by (credential holder), to wit:

2) That this misconduct is a first occurrence for {credential holder).

3) That this misconduct is a minor violation of {statute or rule).

4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the {disciplinary authority) issues this administrative warning and hereby puts the {credential holder) on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date:_____ _____

Signature of authorized representative
For {Disciplinary Authority)

Right to Review

You may obtain a review of this administrative warning by filing a written request with the (disciplinary authority) within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the (disciplinary authority].

The record that this administrative warning was issued is a public record.

The content of this warning is private and confidential.

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority. The rules in ch. RL 9 are adopted under the authority in **s.** 440.03, Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996. No. 488. eff. 9–1–96.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under **s.** 440.08 (4) (b), Stats., as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to review denial of an application for rcncwal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in **s.** 440.01 *(2)* (a), Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in **s.** 73.0301 (1) (c), Stats.

History: Emerg cr eff. 11–14–96; Cr. Register, August, 1996, No 488, eff. **9––96; correction in (4) made under s. 13.93 (2m) (b) 7., Stats.**

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) RENEWAL APPLICATION FORM If the department receives a renewal application that does not include the information required by **s.** 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 Wis Act 191 repealed s 440 08 (2g) (b). Stats

(2) SCREENING FOR LIABILITY FOR DELINQUENT TAXES The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue tbat identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF INTENT TO DENY BECAUSE OF TAX DELINQUENCY. If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to **s.** 440.11, Stats., or to the address identified in the applicant's renewal application, if different From the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant **is** not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR DENIAL. If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under **s.** RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under **s.** 440.08 (4j (b) 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under **s.** RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under **s.** 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section 440.08 **(4)** (b) 3., Stats., referred to here was repealed by 1997 Wis. Act **737** and a new, unrelated s. 440.08 **(4)** (b) recreated.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

FILING A COMPLAINT

COMPLAINTS AND THE DISCIPLINARY PROCESSED

Board Authority for Professional Discipline

Each of the licensing boards in the department has statutory authority to take disciplinary action against licensees who engage in unprofessional conduct or violate other rules/statutes of the board. Unprofessional conduct typically includes: practicing fraudulently, negligently, or incompetently, practicing while being impaired by alcohol, drugs or mental disability, conviction for a crime related to the licensed practice and similar serious matters.

In taking disciplinary action, boards have the authority to reprimand a licensee, to suspend, revoke, or limit a license. The purposes of professional disciplme, as defined by the Wisconsin Supreme court, are: 1) to protect the public, 2) to promote the rehabilitation of the licensee, 3) to deter other licensees from engaging in similar conduct and 4) to publicly express disapproval of certain conduct.

How to File A Complaint

Anyone who wishes to file a complaint against a licensee of a board or a complaint involving activity with the jurisdiction of that board should do so in writing. Preferably a complaint form should be completed. Complaint forms are available either through the department or the Examining Board offices at 1400 East Washington Avenue, Madison, Wisconsin, mailing address, P.O. Box 8935, Madison, Wisconsin, 53708. The complaint forms should be completed in detail, including the who, what, when, and where of a situation. The information should be set forth in chronological order as best as it can be recalled. If written documents are involved, copies should be included.

How the Complaint Is Processed

After a complaint is received, it is logged in the department's Division of Enforcement and then screened to determine whether or not the matter is something over which the board has jurisdiction; and, if so, to identify the statute or rule that may have been violated. If the board does have jurisdiction, the complaint is assigned to an attorney and investigator for investigation.

The attorney and the investigator confer during the course of the investigation. In addition, a member of the board may be assigned as an advisor in the case. Investigative contacts can be made by telephone, letter, personal interview or any combination of those procedures. The investigation involves gathering relevant facts of the case. Persons with knowledge of the case are contacted. This usually includes the person who made the complaint and the person about whom the complaint was made. If treatment records are involved, they will be obtained. Confidentially of the records will be maintained as required by law.

Once the investigation is complete, the investigator, attorney and board advisor review the results of the investigation and come to a preliminary decision on whether the case should be closed with no action taken, or whether formal disciplinary action should be commenced.

If the preliminary determination is for case closure, that recommendation, along with relevant findings, is presented by the investigator to the members of the board in closed session at a scheduled board meeting. If the board concurs, the file is closed by board motion. Letters are then sent to the person who filed the complamt and to the licensee, explaining that the case was closed and the reasons for closure.

If the determination by the investigative team is to commence disciplinary action, the Division of Enforcement attorney repares all necessary documents, including a formal complaint against the licensee, and the matter is scheduled for a Eearing.

How The Formal Complaint is Resolved

Disciplinary hearings are conducted by hearing examiners, who are attorneys. While the statutes give the board the authority to preside over hearings without the use of a hearing examiner, most boards request that a hearing examiner be used. Furthermore, if the board members made the decision to issue a complaint, an exammer must be used. This ensures that the prosecutorial and adjudicative functions are separate, and that a fair and impartial decision is made.

The hearing examiner will generally schedule a pre hearing conference between the parties. The major purposes of the pre-hearing conference are to set forth the issues in the Ease, determine what matters can be resolved without the need for formal testimony, and to establish a schedule for bringing the matter to hearing. Some of the cases, that may lead to the issuance of a formal complaint, are resolved by stipulation between the parties. Of course, such stipulations are subject to the approval of the board involved.

If a formal hearing is necessary, in most cases the hearing examiner presides over it. All testimony is under oath and transcribed. The parties are expected to call whatever witnesses are necessary. The process is very much like a trial. The length of the hearings can range from a few hours to several days. Once the hearing is complete, the hearing examiner prepares proposed findings of fact, proposed conclusions of law and a proposed decision. This is filed with the board, which reviews the decision and determines whether to affirm, reverse or amend it. If a member of the board participated in the investigation, that person is not involved in the board's decision on the case.

The board's options in disciplinary matters are: dismissing the com laint, reprimanding the licensee, limiting, suspending or revoking the licensee's license, or, in some instances, assessing a Forfeiture against the licensee. Boards do not have the authority to award monetary damages or to get money back that a party may believe is due. If a party is dissatisfied with a board decision, the decision can be appealed to circuit court. A circuit court decision can in turn be appealed to higher courts.

The above steps set forth very generally the process that takes place if a complaint is filed against a licensee of one of the boards attached to the department. Each case is different, and some variations may occur among the boards.

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INDEX

TO THE WISCONSIN STATUTES **AND** ADMINISTRATIVE RULES
REPFUNTED IN THIS BOOKLET

References are to statutes sections or administrative rules. Administrative rules citations begin with the prefix "MPSW" or "RL".